

James A. Brundage

**The Crusades, Holy War
and Canon Law**



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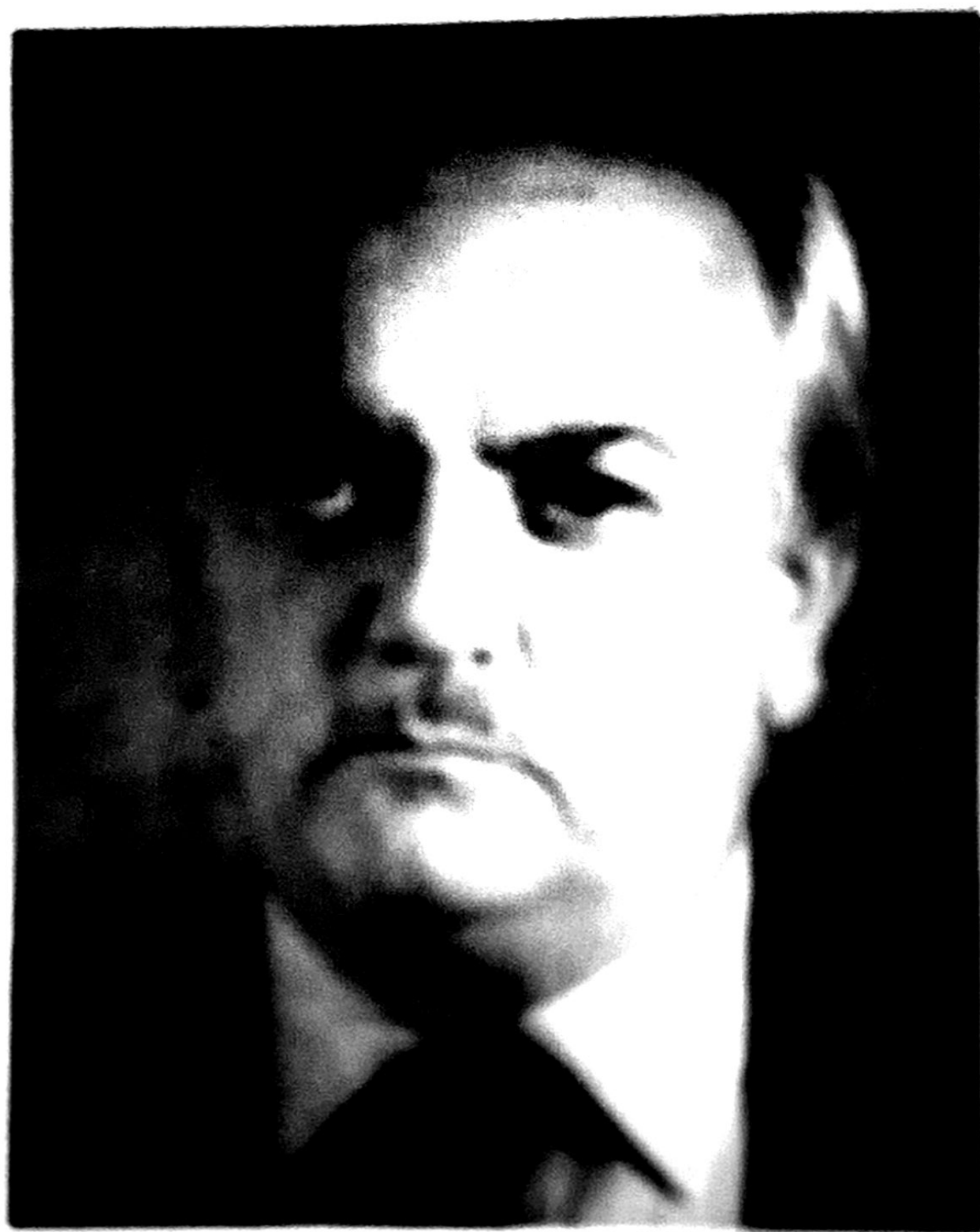
James A. Brundage

**The Crusades, Holy War
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THE CRUSADES, HOLY WAR
AND CANON LAW

1888

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Professor James A. Brundage

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PUBLISHER'S NOTE

The articles in this volume, as in all others in the Collected Studies Series, have not been given a new, continuous pagination. In order to avoid confusion, and to facilitate their use where these same studies have been referred to elsewhere, the original pagination has been maintained wherever possible.

Each article has been given a Roman number in order of appearance, as listed in the Contents. This number is repeated on each page and quoted in the index entries.

PREFACE

The studies collected in this volume address a wide span of issues and problems connected with the history of the Crusades. A few (namely, the studies of Adhémar du Puy, of Stephen of Blois, of Richard Lion-Heart's dealings with Byzantium, and of William of Modena's mission to the Baltic crusader states) deal with the political and diplomatic roles of individual participants in crusading expeditions. The remainder deal with ideological and practical issues that crusading raised, as well as with the institutional consequences of Crusades: just what distinguished these campaigns from other military expeditions sanctioned by ecclesiastical authorities? What obligations did a crusader incur when he enlisted? How and when did those obligations arise? How might the crusader satisfy them? How did the crusader's decision affect his family relationships? Questions of this sort run through most of the studies reproduced here.

Most of the articles in this volume employ legal sources of one type or another and juristic issues permeate the entire collection. This reflects two long-held convictions. The first is that historical problems raised by the Crusades and their aftermath can be understood adequately only within the context of the legal systems of an age that was, after all, permeated by legal values and juristic learning. And the second is an extension of the first, namely that a very large part of the surviving evidence about the Crusades, whether it be documentary (such as charters, secular laws, decrees, and decretals) or narrative (mainly chronicles and letters), was produced by authors familiar with law and legal processes (although few of them had studied law professionally) and whose perceptions were shaped by European legal culture. The historical evidence that bears upon the Crusades, accordingly, was largely informed by the categories of legal analysis, by beliefs and assumptions rooted in the law, by a legalistic approach to human events and human actions. Hence I have examined many of the problems addressed here with particular attention to the legal context in which they arose.

My approach to crusading history and the way in which I have conceptualized its problems bears the influence of teachers, friends, and colleagues: of Edgar Johnson at Nebraska, who not only introduced me to the Baltic Crusades, but also taught me how to read Latin and write

English; of Jeremiah O'Sullivan at Fordham, who showed me how to do institutional history; of Robert Reynolds at Wisconsin, whose marvellously stimulating conversation led me to ask questions I would never otherwise have dreamed of; and of Gaines Post, who guided my first hesitant steps into the thickets of legal history.

It would be folly to pretend that these essays definitively settle once and for all any of the questions that they raise; they do suggest partial answers to some and propose tentative responses to others. If they prompt other students of the Crusades to investigate these issues further and point to avenues that need further exploration, they will have done for others a small part of what my teachers did for me.

*Lawrence,
Kansas, 1990*

JAMES A. BRUNDAGE

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ADHEMAR OF PUY: THE BISHOP AND HIS CRITICS

ADHEMAR of Monteil, bishop of Puy and papal legate on the First Crusade, has intrigued historians for eight hundred years and more. Placed in a highly influential position at a critical time, his premature death robbed him of the chance to fulfill the promise which his career plainly showed. As the personal and official representative of Pope Urban II with the armies of the First Crusade, Bishop Adhemar's policies, the attitude he took toward the feudal princes who headed the several armies which participated in the Crusade, the extent to which he was able to impose upon the princes obedience to the wishes of the pope, the attitude he took toward the churches and churchmen of the East — all were highly significant in determining the relative success of the expedition. Yet, it is exceedingly difficult to reconstruct the historical Adhemar of Monteil; difficult to say just how he did handle the princes on the Crusade or to what extent he was able to impose upon them obedience to papal wishes.

The historians of the First Crusade agree, however, that Adhemar was important, that he was genuinely influential, and that his influence on the Crusaders was beneficial. The testimony of historians on these points is all but unanimous from the twelfth to the twentieth centuries. Adhemar, we are told, gave sustenance to the poor and counsel to the rich,¹ he ruled God's army wisely and thoughtfully,² he was a man "of revered character and immortal memory,"³ "a respectable prelate, alike qualified for this world and the next,"⁴ whose firm, conciliatory attitude held the Crusaders together,⁵ and whose death was "one of the greatest tragedies of the Crusade."⁶ The praises of Bishop Adhemar, as leader, as cleric, and as soldier, have been recounted by a dozen chroniclers of the First Crusade and by a score of historians, from William of Tyre to Sir Steven Runciman. Despite all this, in Runciman's words, Adhemar remains "a rather shadowy figure."

¹ *Gesta Francorum et aliorum Hierosolymitanorum*, x, 30, ed. Louis Bréhier, *Les classiques de l'histoire de France au moyen âge* (Paris, 1924), p. 66.

² Fulcher of Chartres, *Historia Hierosolymitana*, I, iv, 1, ed. Heinrich Hagenmeyer (Heidelberg, 1913), p. 139.

³ William of Tyre, *A History of Deeds Done Beyond the Sea*, vii, 1, ed. and tr. by E. A. Babcock and A. C. Krey, 2 vols. Columbia University, Records of Civilization, xxxv (New York, 1943), I, 299.

⁴ Edward Gibbon, *The Decline and Fall of the Roman Empire*, ch. 58, Modern Library ed. (New York, n.d.), III, 435.

⁵ J. F. Michaud, *Histoire des croisades*, 5^e ed., 6 vols. (Paris, 1838), I, 364. Much the same opinion is expressed by another French historian of the Crusades, writing just about a century after Michaud: René Grousset, *Histoire des croisades et du royaume Franc de Jérusalem*, 3 vols. (Paris, 1934-1936), I, 116. See also B. Leib, S.J., *Rome, Kiev et Byzance à la fin du XI^e siècle* (Paris, 1924), pp. 267-269. French crusading historiography has always been quite well-disposed toward Adhemar.

⁶ Steven Runciman, *A History of the Crusades*, 3 vols. (Cambridge, England, 1951-1954), I, 252. In his *Eastern Schism* (Oxford, 1955), Runciman's verdict is the same, but in the first volume of the cooperative *History of the Crusades* (Philadelphia, 1955), p. 324, he varies his language and calls Adhemar's death "a disaster."

Two American scholars have recently surveyed the eyewitness accounts of the First Crusade to determine the basis of Adhemar's fame and to discover precisely what the bishop did to merit the praise he has so abundantly received.⁷ They conclude that there has been a grave mistake. Adhemar, they tell us, was not, after all, a very great ecclesiastical statesman. The good bishop was simply "a trustworthy man whose recorded accomplishments fell far short of the encomiums heaped upon him."⁸

A conclusion so much at variance with accepted opinion must be accounted for. If Adhemar's contribution to the Crusade was so slight, then how account for his posthumous fame? To this question, the Hills have an answer: "It lies," they say, "in part in the very obscurity of his deeds and perhaps also in the human desire to find among the leaders of the Crusade a man who could be praised by all. Adhemar was a non-controversial figure of good repute."⁹

Without deprecating the labors of these two scholars, I would suggest that the evidence they present is incomplete. Some significant testimony about Adhemar's career did not come within their purview and the conclusions just quoted should be modified to take into account some additional evidence.

II

First of all, let us recount briefly the established facts, the incidents in Adhemar's career which are attested by eyewitnesses and accepted both by the Hills and by most historians of the First Crusade.¹⁰

Adhemar of Monteil was a nobleman: possibly he was a member of the family of the counts of Valentinois. At some unknown date between 1080 and 1087, Adhemar became bishop of Puy and, in his new office, acted vigorously and successfully to regain certain lands which had been alienated from his see by various feudal lords under the laxer rule of Adhemar's predecessors.¹¹ We know also that Adhemar was acquainted, at least after April 1087, with Raymond of St-Gilles, count of Toulouse, who was to accompany him on the Crusade.¹² In August 1095 Pope Urban II visited Puy and, beyond any serious doubt, the pope and Bishop

⁷ John Hugh Hill and Laurita L. Hill, "Contemporary Accounts and the Later Reputation of Adhemar, Bishop of Puy," *Medievalia et Humanistica*, ix (1955), 30-38. See also J. H. Hill's characterization of Bishop Adhemar in his "Raymond of Saint Gilles in Urban's Plan of Greek and Latin Friendship," *SPECULUM*, xxvi (1951), 265.

⁸ J. H. and L. L. Hill, *op. cit.*, p. 38.

⁹ *Ibid.*, p. 37.

¹⁰ I have accepted as "facts" the credible accounts of the eyewitness narratives of the Crusade, especially where these are corroborated by other, independent accounts. This is substantially the same criterion employed by the Hills; *ibid.*, p. 30.

¹¹ The principal source of information about Adhemar's early career is the *Chronicle* of the monastery of St Peter of Puy which, together with some other documents bearing upon Adhemar's life and work, has been edited by Ulysse Chevalier in the *Cartularium Monasterii Sancti Theofredi Calmiliensis* (Montbéliard, 1884). See especially pp. 161-162. Cf. also Claude de Vic and J. J. Vaisette, *Histoire générale de Languedoc*, 10 vols. (Toulouse, 1840-1846), iii, 220, 261.

¹² Raymond's name heads the list of lay witnesses to a charter by which Adhemar, with the consent of his canons, granted the church of Usson to the monastery of Chasse-Dieu; *Histoire générale de Languedoc*, iii, 260.

Adhemar met at that time.¹³ Adhemar was, of course, present at the Council of Clermont, 18–28 November 1095. There, at the dramatic public session of the Council on 27 November, when Pope Urban publicly proclaimed the Crusade, Bishop Adhemar of Puy was the first person to take a vow to go on crusade. On the following day, Adhemar was chosen as papal legate to accompany the Crusading armies.¹⁴ Shortly thereafter, in December 1095, Pope Urban wrote to the Flemings, inviting them to participate in the expedition. In his letter the pope referred explicitly and at length to Adhemar's appointment as legate and to the extensive powers with which the bishop was entrusted.¹⁵

During the period between the proclamation of the Crusade, in November 1095, and the actual departure of the armies, which was set for 15 August 1096, Adhemar was actively recruiting men and raising money in preparation for the journey.¹⁶ At length, in October 1096, Adhemar and the forces he had raised departed, in company with Raymond of St-Gilles and his army. Together the bishop and the count, with their forces, made the arduous and miserable journey overland, across the Alps, through northern Italy, skirting the headwaters of the Adriatic, then down through Slavic Dalmatia to the Byzantine frontier. At Durazzo, Adhemar's brother, William Hugh of Monteil, who was ill, stayed behind to convalesce.¹⁷

With Byzantine mercenaries as escorts, the Crusaders set out from Durazzo for Constantinople. En route, in the valley of Pelagonia, Adhemar strayed away from the Crusaders' camp and was set upon by the Pecheneg mercenaries who policed the army's line of march. The legate was subjected to some distressing treatment: he was thrown from his mule, robbed of his gold, and beaten over the

¹³ Two papal letters were dated at Puy on 15 August 1095: P. Jaffé, *Regesta Pontificum Romanorum ab Condita Ecclesia ad Annum post Christi Natum MCXCVIII*, 2 vols. (Leipzig, 1885–1888), #5570, 5571 (I, 680).

¹⁴ Baldric of Dol, *Historia de Peregrinatione Jerosolimitana*, I, 5, *Recueil des historiens des croisades, Historiens occidentaux*, 5 vols. in 6 (Paris, 1844–1895) [cited hereafter as *RHC, Occ*], IV, 15–16. Robert the Monk, *Historia Iherosolimitana*, I, 4, *RHC, Occ*, III, 731.

¹⁵ *Epistulae et Chartae ad Historiam Primi Belli Sacri Spectantes*, ed. Heinrich Hagenmeyer (Innsbruck, 1901), pp. 136–137. This letter shows very plainly that Pope Urban regarded Bishop Adhemar with the greatest respect and considered his role in the Crusade as an extremely important one. The bishop is referred to as “huius itineris ac laboris ducem” and the pope told the Flemings in no uncertain terms that those who joined the Crusade must be prepared to submit themselves to Adhemar's orders.

¹⁶ Chevalier, *op. cit.*, pp. 88, 139–141.

¹⁷ Raymond of Aguilers, *Historia Francorum qui Ceperunt Iherusalem*, I, *RHC, Occ*, III, 235–236, describes the journey through Dalmatia and all its attendant difficulties. Raymond of Aguilers, who was a canon of Puy and chaplain to Raymond of St.-Gilles, provides the most extensive eyewitness account of Adhemar as a Crusader, for he travelled and camped during most of the expedition in the same company as the Legate. The use of Raymond's account, however, is fraught with some peril for the unwary. Raymond was credulous, naive, and partisan in many matters, and not least in his treatment of the supernatural events of the Crusade. His account is nonetheless valuable and useful when the chronicler speaks of matters which came within his direct experience. His factual account of the expedition to the Holy Land is corroborated in many details by the other eyewitnesses, notably Fulcher of Chartres and the anonymous author of the *Gesta Francorum*. Although Raymond's judgment is fallable in the extreme, his basic veracity in factual matters cannot be seriously doubted.

head. Bishop Adhemar was saved from a still worse fate, however, by the greed of one of his captors, who wished to take all of the bishop's gold for himself and who had thus to fend off the other Pechenegs. Meanwhile the disturbance had been noted in the Crusaders' camp and Adhemar was rescued in short order from his attackers. When the army came to Thessalonica, Adhemar chose to tarry there, while the rest of the army continued on its way. The reason for his delay is noted by the chronicler as an illness and doubtless the after-effects of the beating he had suffered were responsible for his delay.¹⁸ From this point onward, nothing more is known of Adhemar until he reappears in the chronicles on 16 May 1097 in Asia Minor, participating in the siege of Nicaea, where he was again associated with Raymond of St-Gilles. Doubtless Adhemar had made the journey through Constantinople and probably he had rejoined Raymond of St-Gilles there, although there is no explicit contemporary evidence to support these conjectures.¹⁹

At Nicaea Adhemar and Raymond took up posts on the south side of the city. Adhemar is mentioned by the chroniclers in connection with two incidents during the siege of Nicaea: he commanded the right flank of Raymond of St-Gilles' army in the battle fought about 21 May 1097 to drive off the forces which Kilij Arslan had brought up to relieve the city's garrison. Adhemar is also mentioned prominently in connection with the successful undermining of one of the towers of the city wall.²⁰

The next well-attested appearance of the papal legate occurred at the Battle of Dorylaeum, 1 July 1097. Bishop Adhemar's part in this action is well-known: when an advance party of the Crusading army, led by Bohemund, was attacked near Dorylaeum by Kilij Arslan's Turks, Bohemund hurriedly informed the other units of the army, which followed a day's march behind him. The army hurried forward directly to join Bohemund and his forces on the battlefield. Adhemar, however, led his troops by another route through the mountains and appeared suddenly and unexpectedly with his forces on the flanks of the Turkish army. The surprise appearance of the legate's army turned the battle in favor of the Crusaders: the Turks forthwith fled from the field.²¹

The remainder of the Crusaders' march through Asia Minor is passed over without any further mention of the Bishop of Puy by the chroniclers who were with the army. When the Crusaders reached Antioch, however, the bishop reappeared in the records. During the siege of Antioch, Raymond of St-Gilles and Adhemar of Puy with their forces camped together near the Orontes River at a site where they were exposed to continual annoyance from the Saracens within the besieged city.²² Adhemar's role in the siege of the city is attested to by eye-

¹⁸ *Ibid.*, II, *RHC, Occ*, III, 237. Adhemar also wished to await his brother who had recovered and was on his way to rejoin the army.

¹⁹ Still less is there any contemporary evidence to support Runciman's guess that Adhemar may have seen the Holy Lance displayed among the relics at Constantinople. This is an ingenious conjecture which carries a good deal of inherent probability, but it is still a guess. See Steven Runciman, "The Holy Lance Found at Antioch," *Analecta Bollandiana*, LXVIII (1950), 197-209.

²⁰ Raymond of Aguilers, III, *RHC, Occ*, 239; *Gesta Francorum*, II, 8, ed. Bréhier, pp. 36-38.

²¹ Raymond of Aguilers, IV, *RHC, Occ*, III, 240-241; *Gesta Francorum*, III, 9, ed. Bréhier, pp. 44-48.

²² Raymond of Aguilers, V, *RHC, Occ*, III, 243.

witnesses on four occasions. In late December 1097, while Bohemund and Count Robert of Flanders were away from the Crusaders' camp on a foraging expedition and while the other princes were either ill or absent, Raymond of St-Gilles and Bishop Adhemar were left in charge of the Crusader's camp. On 29 December a major Saracen force from within Antioch attacked the camp, but was driven back after much confusion. Adhemar's standard-bearer was slain in the fray and his banner was captured.²³ On the following day the Crusaders felt an earthquake. They were further distressed by the appearance of the northern lights in the sky that night. Bishop Adhemar ordered the army to do penance for its sins by a series of religious exercises, including a three-day fast (food was in short supply anyway), a penitential procession, prayers, and almsgiving.²⁴ About a month later, on 8 February 1098, Adhemar was host to a meeting of the council of the Crusading princes in his tent. At this meeting plans were made to fight off the army which Ridwan of Aleppo was bringing up to relieve the besieged Saracens in Antioch. The plans formulated that night were eminently successful in the field the following morning. Unfortunately no one was so thoughtful as to leave a detailed report of the princes' discussion, so that we cannot say how influential Adhemar's opinions may have been.²⁵ We are also told on reliable authority that Adhemar was one of the leaders to whom Bohemund communicated his successful plan for the capture of Antioch.²⁶

Once they had taken Antioch, the Crusaders soon found themselves besieged within the city by Kerbogha, the *atabeg* of Mosul. During this siege, the Crusaders faced serious perils, both from the Turks outside the city and from food shortages and disease within the town. As the siege wore on, numerous attempts were made by individuals and small groups of Crusaders to escape from the city. Adhemar is credited with taking steps, in cooperation with Bohemund, to seal off the escape routes used by the deserters.²⁷

During this same period, the Crusading princes were apprised of what purported to be two special manifestations of God's good-will toward them. A Provençal peasant named Peter Bartholomew approached Bishop Adhemar and Count Raymond of St-Gilles on 10 June 1098 with a long and complicated tale about a series of visions in which, he said, St Andrew and a companion (later identified as Christ) had revealed to him the hiding place of the Holy Lance which pierced Christ's side at the crucifixion.²⁸ Another miraculous vision was reported the following morning by a priest named Stephen, who claimed to have seen a vision of Christ in St Mary's Church in Antioch.²⁹ Adhemar, as the papal legate with the army, figures prominently in the reports of both of these incidents. Toward Peter Bartholomew, Adhemar was noticeably cool: he considered this

²³ *Loc. Cit.*; *Gesta Francorum*, vi, 14, ed. Bréhier, p. 74.

²⁴ Raymond of Aguilers, vi, *RHC, Occ*, III, 245.

²⁵ *Ibid.*, vi, *RHC, Occ*, III, 246.

²⁶ *Gesta Francorum*, viii, 20, ed. Bréhier, p. 104.

²⁷ Raymond of Aguilers, xi, *RHC, Occ*, III, 256.

²⁸ *Ibid.*, x, *RHC, Occ*, III, 253-255.

²⁹ *Ibid.*, xi, *RHC, Occ*, III, 255-256.

visionary's tale to be nothing but a story, according to Raymond of Aguilers.³⁰ Furthermore, even after an excavation at the site indicated by Peter had, in fact, uncovered a metal rod, the legate's suspicions were still not allayed: Peter was questioned and was caught in a lie about his ability to read.³¹ Bishop Adhemar remained highly skeptical both of the Holy Lance and of its finder, although the bishop was apparently swayed sufficiently by the general enthusiasm for the Lance to have Raymond of Aguilers carry it into battle with his Provençal troops.³² Bishop Adhemar was less inclined to doubt the story told by the priest, Stephen, and was willing to accept the account of the latter's vision, provided only that Stephen would swear on a cross to the truth of his tale. The legate was apparently not inclined to take up Stephen's offer to substantiate his story further by undergoing an ordeal by fire or by jumping from a high tower to prove his credibility.³³ How Bishop Adhemar would have reacted to such an offer from Peter Bartholomew we may well wonder.

During the latter part of June 1098 Adhemar fell ill,³⁴ but he was well enough to take an active part in the battle of 28 June, in which Kerbogha's army was routed and the Turkish siege of Antioch was lifted.³⁵ After Antioch had finally been secured, the princes of the Crusading army fell to bickering over the distribution of the spoils and the possession of the city. Adhemar's health, meanwhile, grew worse during July. On 1 August 1098 he died.³⁶ His death was the occasion for deep and, presumably, sincere mourning. All of the contemporary sources carry more or less elaborate eulogies of the deceased legate.

Adhemar was buried in considerable state in the basilica of St Peter in Antioch and, within two days, visions of the late prelate began to be reported. One of the first visions was related by Peter Bartholomew, who apparently still resented Adhemar's skepticism regarding the Holy Lance. Peter reported that Adhemar had appeared to him and had told a dreadful tale. The late bishop, said Peter, had spent the past two days in hell because of his reluctance, while living, to acknowledge the genuineness of the Lance. Adhemar's stay in the infernal regions had been cut short, according to Peter, because of a candle which some friends of the bishop had burned in his memory, because of a gift of three denarii which Adhemar had once made at the shrine where the Lance was kept, and because of the prayers of Bohemund.³⁷ Bishop Adhemar appeared in other visions to various

³⁰ See also Fulcher of Chartres, I, xviii, 2, ed. Hagenmeyer, pp. 236–237.

³¹ *Ibid.*, XI, *RHC, Occ*, III, 257–258.

³² *Ibid.*, XII, *RHC, Occ*, III, 260–261; cf. the accounts in *Gesta Francorum*, IX, 25, ed. Bréhier, pp. 132–134, and the letter of the clergy and people of Lucca, *Epistulae et Chartae*, pp. 166–167. Although Raymond of Aguilers was obviously a firm believer in the alleged miracle, his account of Adhemar's skepticism seems fair and balanced.

³³ Raymond of Aguilers, XI, *RHC, Occ*, III, 256.

³⁴ *Ibid.*, XI, *RHC, Occ*, III, 258.

³⁵ *Ibid.*, XII, *RHC, Occ*, III, 259–261; *Gesta Francorum*, XX, 29, ed. Bréhier, p. 152; Fulcher of Chartres, I, xxii, 7 and xxiii, 1, ed. Hagenmeyer, pp. 254–255.

³⁶ Raymond of Aguilers, XIII, *RHC, Occ*, III, 261–262; *Gesta Francorum*, X, 30, ed. Bréhier, p. 166; *Epistulae et Chartae*, p. 164; Fulcher of Chartres, I, xxiii, 8, ed. Hagenmeyer, p. 258.

³⁷ Raymond of Aguilers, XIII, *RHC, Occ*, III, 262–263.

persons in the Crusading army: he is reported, in fact, to have had quite an active posthumous career. Nearly a year after his death, Adhemar appeared to a priest, Peter Desiderius, while the Crusaders were besieging Jerusalem. On this occasion the deceased legate was said to have ordered the Crusaders to fast and to make a procession around Jerusalem in token of their repentance for their past offences.³⁸ The deceased bishop's orders were followed and when, nine days later, Jerusalem was taken by assault, several Crusaders reported that they had seen Bishop Adhemar fighting in the front ranks of the army.³⁹

III

The facts just related are all adequately attested by documents or by eyewitnesses. There is no controversy over them, nor does it seem likely that any controversy will develop. To these documented and accepted facts, however, the Hills add a number of inferences which are more debatable.

They argue, first of all, *ex silentio*, that Adhemar dictated no military decisions on the Crusade.⁴⁰ Coupled with this is a statement to the effect that such military unity as there was in the First Crusade was achieved through the council of the princes, a body with which Adhemar is known to have met on some occasions.⁴¹ What transpired at the meetings of this council, no one can now say. It is not inconceivable that Adhemar's voice in this assembly carried considerable weight, even though no one single decision reached at any one meeting of the group can be isolated as having originated with the legate.

These observations cut both ways: there is no proof whatever that Adhemar was (or was not) influential in the council of the Crusading princes. Since contemporary eyewitnesses assumed that he was, in fact, a power among the princes,⁴² it would seem safe to assume that, in the absence of positive evidence to the contrary, Adhemar's reputation among his contemporaries was well-founded.⁴³ Further, there is reason to think that the tactics which Adhemar pursued with such spectacular success at Dorylaeum originated with him.⁴⁴ In the face of this strong possibility, it seems rash to assume that the legate was responsible for none of the military decisions on the Crusade.

The Hills further assert that Adhemar's role in the siege of Nicaea was "inconspicuous."⁴⁵ Since we have definite eyewitness accounts of only three military

³⁸ *Ibid.*, xxx, *RHC, Occ*, III, 296-297.

³⁹ *Ibid.*, xxx, *RHC, Occ*, III, 300.

⁴⁰ The validity of this argument is frequently questionable, but especially in such a case as this. Powicke goes so far as to say that "Except in rare and definite cases the argument *e silentio* is invalid for the medieval historian" (*Ways of Medieval Life and Thought* [London, n.d.], p. 31).

⁴¹ J. H. and L. L. Hill, *op. cit.*, p. 33.

⁴² Raymond of Aguilers, XIII, *RHC, Occ*, III, 262; *Gesta Francorum*, x. 30, ed. Bréhier, p. 166; Fulcher of Chartres, I, iv, 1, ed. Hagenmeyer, p. 139.

⁴³ This conclusion has, at least, the merit of being supported by all the available eyewitness accounts of the First Crusade. To assume, on the other hand, that Adhemar's contemporaries and companions on the Crusade were, to a man, misinformed or misled on such a point of fact seems hazardous indeed. Although the Hills prefer to accept this latter conjecture, I cannot agree.

⁴⁴ This is the obvious implication of the account in the *Gesta Francorum*, III, 9, ed. Bréhier, p. 48.

⁴⁵ J. H. and L. L. Hill, *op. cit.*, p. 33.

engagements between the Crusaders and the Turks at Nicaea and since Adhemar figures rather prominently in the reports of two of these three clashes, the adjective "inconspicuous" seems badly chosen and the implications of the statement seem quite unwarranted.

Lastly, it is said that Adhemar's role in the defense of Antioch against Kerboğa's attack "was far from spectacular."⁴⁶ Since Adhemar fell ill during this siege, his unspectacular part in it does not seem particularly surprising, nor should it derogate greatly from the bishop's reputation.

IV

There is, finally, some additional information substantiated by eyewitnesses and by contemporary documents, which is not mentioned by the Hills and which bears upon Adhemar's achievements and reputation. This additional information concerns two aspects of Adhemar's connection with the Crusade: his influence upon the genesis of the movement and his activities with regard to the Eastern Churches.

A.

It has often been assumed that Adhemar of Puy had some influence, of a kind and measure indeterminate, on the mind of Pope Urban II while the latter was maturing the idea of the Crusade.⁴⁷ This assumption is based upon three pieces of evidence:

(1) Adhemar probably made a pilgrimage to the Holy Land, from which he returned in 1087. It is assumed, therefore, that his first-hand experience of conditions in the East made him a useful and natural advisor for the pope to consult.⁴⁸

⁴⁶ *Ibid.*, p. 35.

⁴⁷ E.g. Carl Erdmann, *Die Entstehung des Kreuzzugsgedankens* (Stuttgart, 1935, reprinted 1955), p. 304; Augustin Fliche, *La réforme grégorienne et la reconquête chrétienne, 1057-1123* (Paris, 1950), vol. VIII of *Histoire de l'Église depuis les origines jusqu'à nos jours*, pp. 274-275; Runciman, *History of the Crusades*, I, 110; Duncalf's opinion is expressed in the cooperative *History of the Crusades*, ed. Kenneth M. Setton, I, 234.

⁴⁸ The evidence that Adhemar made this pilgrimage is ambivalent. It rests upon a chronicler's statement that Abbot William IV of Saint-Chaffre could not be blessed immediately after his election because the diocesan Ordinary, Bishop Adhemar of Puy, was on a pilgrimage to Jerusalem at the time. The bishop, continues the chronicler, returned *post breve temporis spatium* and blessed the abbot in 1087. The account is printed in Chevalier, *op. cit.*, pp. 13-14. The story is straightforward enough, but Bréhier questioned it, arguing *ex silentio* that such a pilgrimage, had it been made, would have been noted by the chronicler of St Peter of Puy. Louis Bréhier, "Adhemar de Monteil," *Dictionnaire d'histoire et de géographie ecclésiastique* (Paris, 1912), Vol. I, cols. 552-555. The Hills are disposed to agree with Bréhier. The argument against the pilgrimage, however, is not very convincing. To be valid, such an argument *ex silentio* must fulfill two conditions: (1) it must both demonstrate a plausible reason for the alleged fabrication and (2) it must show that other reporters, who were in a position to know of the alleged event and who would inevitably have recorded it, fail to mention it. To justify the fabrication of the pilgrimage, Bréhier postulates that there was some irregularity in Abbot William's election and that the entry about Adhemar's pilgrimage was inserted in the chronicle to cover up a delay in the abbot's consecration. No good proof of the irregularity, however, is adduced and the hypothesis seems the more tenuous since Adhemar was engaged in apparently amicable dealings with the monastery of St-Chaffre and its abbots, both before and after the alleged difficulties; Chevalier, *op. cit.*, pp. 17, 86. Under these circumstances, the best that can be said for the argument against the pilgrimage is the Scots verdict: "Not proven."

That fact (2) that Pope Urban visited Puy in August 1095 and that (3) it was from Puy that the pope issued the summons for the Council of Clermont⁴⁹ would seem to indicate that the Bishop of Puy must at least have been well-informed about the pope's intentions and that he probably had some chance to discuss the proposed Crusade with the pope long in advance of the public proclamation of the expedition on 27 November 1095.

To infer from these facts that Pope Urban and Bishop Adhemar discussed the Crusade while the notion was just taking shape in the pope's mind and that Adhemar may have influenced Urban's plans for the Crusade seems both natural and reasonable.

The inference, however well founded, can unfortunately go no further. The Hills point out, quite rightly, that there is no eyewitness to the confabulations of pope and bishop at Puy.⁵⁰ Who influenced whom and to what extent must remain a mystery unless some further evidence is forthcoming.

B.

Of greater importance, because it pointed a way to the solution of certain difficulties which later Crusaders never satisfactorily solved, was Adhemar's attitude toward the Eastern Churches. Krey has argued with much learning and conviction that one of the primary purposes of the Crusade in Pope Urban's mind was to reunite the Eastern and Western Churches under papal leadership.⁵¹ Whether or not one agrees completely with Krey's thesis, the fact remains that Bishop Adhemar of Puy is the only individual on the first Crusade — one of the few individuals on any of the Crusades, in fact — who made some apparently successful efforts to effect a union of sorts with Eastern churchmen and to work whole-heartedly with them. If this be so, then it must be conceded that Adhemar's death was, indeed, one of the great tragedies of the Crusade, as Runciman called it.

The evidence that Adhemar worked successfully to secure cooperation between Eastern and Western churches rests upon three sources: two letters and the statement of a chronicler. The first of the letters referred to was sent from Antioch about 18 October 1097 in the names of Patriarch Simeon of Jerusalem and Bishop Adhemar of Puy.⁵² The letter relates that the two prelates, the Western legate and the Eastern patriarch, after taking counsel with one another, have decided to appeal jointly for further military aid from the West. They recount very briefly the story of the Crusaders' journey to Antioch and warn those who have taken Crusading vows but have not yet fulfilled them that unless their vows are quickly made good they will be placed under anathema.

A second, longer letter was sent to the West in the name of the Greek and Latin

⁴⁹ Jaffe, *Regesta*, #5570, 5571 (I, 680).

⁵⁰ J. H. and L. L. Hill, *op. cit.*, p. 31.

⁵¹ A. C. Krey, "Urban's Crusade—Success or Failure?" *American Historical Review*, LIII (1947–48), 235–250. For a review of the literature (to 1940) on this and other interpretations of Urban's plans, see Marshall Baldwin, "Some Recent Interpretations of Pope Urban II's Eastern Policy," *Catholic Historical Review*, xxv (1939–40), 459–466. The literature is also reviewed extensively and recently by Paul Rousset, *Les origines et les caractères de la première croisade* (Neuchâtel, 1945).

⁵² *Epistulae et Chartae*, pp. 141–142.

bishops and the patriarch of Jerusalem. This second missive was, without much doubt, drafted by Adhemar; certainly it was inspired by him.⁵³ The second letter, dated from the Crusaders' camp near Antioch in January 1098, deals in a more elaborate fashion with the same general themes as the first letter. It was essentially an appeal for more men, an invitation to the fighting men of the Western world to join in the Crusade. This second letter is especially important for the historian who attempts to estimate Adhemar's effectiveness as a papal intermediary with the prelates of the East. The thing which immediately strikes the reader of this letter is the independent, assertive spirit of the patriarch of Jerusalem, the nominal author of the document, and this in spite of the fact that the letter, at least in its Latin form, was probably drafted by a papal legate and certainly was approved by him. It may be inferred from this letter — and the inference seems eminently legitimate — that Bishop Adhemar was bent upon securing the support of the patriarch and of other Eastern churchmen for the papacy and that, at the same time, he found it necessary to compromise with the traditional independence of the Eastern prelates. Thus the patriarch of Jerusalem, although working in cooperation with a papal legate, appears in this second letter as a decidedly independent prelate, one who, for example, can take it upon himself to excommunicate, without reference to the pope or to any other authority, all those who have not yet fulfilled their vows as Crusaders. The patriarch, again, shows no hesitancy, even in a letter addressed to the West, in ordering that renegade Crusaders be deprived of Christian burial. To judge from the language of this letter, indeed, the patriarch saw no substantial difference between East and West, between Greek and Latin clergy: all, to his eyes, were Christians and brethren.⁵⁴

The language of these two letters shows that Adhemar succeeded in establishing a healthy working relationship between himself as papal legate and one of the most important dignitaries of the Eastern Church. Precisely how he did so, we do not know and probably never shall.

A further implication also arises from these letters. Had Adhemar lived to supervise the ecclesiastical settlement in the areas conquered by the Crusaders in 1098–1099, had he had a voice in the establishment of the Latin States, the tragic distrust and enmity of later Eastern and Western churchmen might well have been mitigated or even avoided altogether.

One final item of evidence must be noted. Albert of Aachen was not personally a participant in the Crusade, but from the stories and reminiscences of soldiers and clerics returning from the Crusade, Albert put together his *Historia Hierosolymitana*, which incorporates a good deal of eyewitness evidence.⁵⁵ Although Albert's evidence must be viewed with some skepticism, it cannot be discounted entirely, especially where it tallies with other known facts.⁵⁶ Albert states that after

⁵³ *Ibid.*, pp. 146–149; Runciman, *The Eastern Schism*, p. 86.

⁵⁴ See the remarks of Leib, *Rome, Kiev et Byzance*, pp. 262–263.

⁵⁵ Albert describes his working methods at the beginning of the *Historia Hierosolymitana*, I, 1, *RHC, Occ*, IV, 271.

⁵⁶ See the opinion of Runciman, *History of the Crusades*, I, 331; see also Bernhard Kugler, *Albert von Aachen* (Stuttgart, 1885).

the Crusaders' capture of Antioch, Adhemar of Puy undertook the task of cleansing the basilica of St Peter the Apostle from its defilement by the Saracens and of restoring it to Christian use. Albert says further that both Greek and Latin clergy were given posts in the city's churches and that the Eastern patriarch of Antioch, John IV, was restored to his position as the ecclesiastical ruler of the city.⁵⁷ There is nothing inherently improbable in this account and, taken with the evidence of the letters just cited, there seems no reason to doubt the accuracy of Albert's account of these events.⁵⁸ It should be remarked, however, that a reaction against Adhemar's ecclesiastical policies materialized very soon after his death. Within a few weeks of the legate's demise Raymond of St-Gilles had established a Latin bishop at Albara and, although this bishop was consecrated by the Greek patriarch of Antioch, his appointment marked the beginning of that ominous rift between Eastern and Western churchmen in the Crusading states.⁵⁹ Further evidence of this same trend appears in the very letter in which the Crusading princes announced Adhemar's death to Pope Urban. The princes called upon the pontiff to come to the East in person, to take over the see of Antioch, and to lead the Crusading army in its attack upon Jerusalem. They thus ignored completely the existence of the perfectly legitimate Greek patriarch whom Adhemar had restored to the see of Antioch.⁶⁰

Thus it would seem that Adhemar, the official and personal representative of the pope, set out to construct a unified ecclesiastical organization, using the native Eastern clergy together with the Latin clerics who had come on the Crusade to minister to the spiritual needs of Eastern and Western Christians alike. On the basis of this evidence, it seems fair to conclude that Adhemar, as the representative of Pope Urban II on the Crusade, laid the foundations of a wise and sane ecclesiastical policy in the East. His policies came to nought, partly because of Adhemar's own premature death, and partly, too, because of the machinations of those Crusading nobles whose personal interests dictated a far different ecclesiastical policy for the new Western enclaves in the East.⁶¹

V

Looking back on the list of achievements catalogued here, the strictures of the Hills on Adhemar's career seem unjustifiably severe.

Bishop Adhemar demonstrated on numerous occasions that he was a capable, imaginative, resourceful military commander in the field. He participated actively in the conferences of the princes, which determined the military actions of the

⁵⁷ Albert of Aachen, v, 1, *RHC, Occ*, iv, 433. A Council at Antioch, over which Adhemar presided, also granted certain privileges to the see; Fulcher of Chartres, III, xxiv, 15, ed. Hagenmeyer, pp. 740-741.

⁵⁸ Further information may be found in William of Tyre, vi, 23, *RHC, Occ*, i, 273-275 (ed. and tr. Babcock and Krey, i, 296-297); Ordericus Vitalis, *Historia Ecclesiastica*, x, in André Duchesne, *Historia Normannorum Scriptores Antiqui* (Paris, 1619), pp. 796-797; Ralph of Caen, *Gesta Tancredi*, CXL, CXLVII, *RHC, Occ*, III, 704-709. See also Krey, "Urban's Crusade—Success or Failure?" *American Historical Review*, LIII (1947-48), 237-238.

⁵⁹ *Gesta Francorum*, x, 31, ed. Bréhier, pp. 166-168; Raymond of Aguilers, xiv, *RHC, Occ*, III, 266.

⁶⁰ *Epistulae et Chartae*, pp. 161-165; Runciman, *Eastern Schism*, pp. 86-87.

⁶¹ See also Leib, *Rome, Kiev et Byzance*, p. 268.

Crusade and gave it what unity it had. Adhemar had every opportunity to counsel and advise Pope Urban II at the critical moment when the pope issued his summons to the prelates who were to hear the proclamation of the Crusade at Clermont. Most important of all, Adhemar is shown from his letters and from contemporary accounts to have begun to establish a far-sighted policy of cooperation between Western Crusaders and Eastern churchmen.

It is quite true that Adhemar died before he could work out in full the policies which he had initiated, before he could impress his desires and plans firmly upon the Western princes who were to govern the Latin states in the East. The fact remains, however, that the contemporary evidence of eyewitnesses and of the legate himself show Adhemar to have been considerably more than the nonentity which his recent critics have described.

It is, at the same time, true that the Hills have performed a valuable service in their study. Adhemar has sometimes been over-rated as the unifying figure of the First Crusade.⁶² A careful examination of the firsthand evidence casts grave doubts upon the notion that Adhemar of Puy was alone responsible for holding the Crusaders together. But, while conceding this major merit to their work, it seems that the Hills' conclusions were too sweeping to be fully justified by the evidence. A true and just estimate of Bishop Adhemar must rather fall somewhere between the extreme revisionist notions of the Hills, who consider the bishop a nonentity, and the excessively laudatory conception of him which is traditional.

Adhemar of Puy was, in the final analysis, neither a superman or simply "a non-controversial figure of good repute."⁶³ If not the greatest of the leaders of the First Crusade, he must at least rank among the more important of them. He must be credited with leaving behind him a record of solid achievement, even though the most important of his enterprises was soon undone by others. In this sense, Adhemar's contemporaries were very close to the truth when they labeled him the Moses of the Crusade.

⁶² See, *e.g.*, Michaud's estimate of Adhemar in *Histoire des Croisades*, I, 364.

⁶³ J. H. and L. L. Hill, *op. cit.*, p. 37.

II

AN ERRANT CRUSADER: STEPHEN OF BLOIS

The history of the First Crusade is, in large part, the history of mass movements of men. The deeds of any individual in the Crusade, even those of the major leaders, cannot be traced in their entirety. The part played by any individual in the Crusade can only be sketched in outline and even then, puzzling gaps in the record can be expected to show up as a matter of course.¹ Since this is true of the tangible, external actions of the Crusading leaders, it is no great surprise to find the same thing true of their thoughts, attitudes, and plans. It is true enough, again, in this context that something can be done to characterize the attitudes of the masses of the Crusaders, as these attitudes are reflected by chroniclers, poets, and popular writers of various kinds.² But to try to recover the personal thoughts and attitudes of one or another of the major leaders of the Crusade is a far more difficult problem. On a few topics, where attitudes may easily and unequivocally be reflected by external acts, it is possible to make a fairly sure estimate of the thoughts and beliefs of one or another of the Crusading princes. When one speculates on such subjects, the only conclusion which can be reached is that these questions are unanswerable or that answers to them can be deduced only with great hesitation and circumspection from data which do not bear directly upon the central question at all.

There is one exception to this general rule, one leader of the Crusade about whom we can say with a high degree of certainty that we know his attitude toward the Byzantine Emperor, that we know his opinion of Constantinople and of Asia Minor, that we even know something about how he felt toward the other princes of the Crusade. This sole exception is Stephen Henry, Count of Chartres and Blois. Stephen alone among the princes of the Crusade has left us two personal letters, addressed to his wife, from which much personal information about his wishes, attitudes, desires, and plans can be gleaned.³

¹ Cf. the observations in a similar vein of John C. Andressohn, *The Ancestry and Life of Godfrey of Bouillon* (Bloomington, Ind. 1947) 7.

² As, e.g., Paul Rousset has attempted to do in his stimulating monograph, *Les Origines et les caractères de la première croisade* (Neuchâtel 1945).

³ The best edition of these letters is Heinrich Hagenmeyer's *Epistolae et chartae ad historiam primi belli sacri spectantes: die Kreuzzugsbriefe aus den Jahren 1088-1100* (Innsbruck 1901) 138-140, 149-152 [this edition is hereafter cited as HE]. The letters have long been known. The earlier of them was first published by Bernier in his *Histoire de Blois* (Paris 1682) from a Chartres MS (now vanished). The same letter was later published from Vat. Reg. 1283 (481) in Mabillon's *Museum Italicum* I 2 (Paris 1724) 237-239. The text

Despite the fact that Stephen of Blois' role in the Crusade is so well documented, his career as a Crusader is strange and enigmatic. His personal bravery in combat cannot be denied. His enthusiasm for the Crusade is evident in his letters and in other sources as well. He was named to the slightly mysterious but important-sounding post of *dominus, provisor, atque gubernator* of the army by the council of the Crusading princes. Yet, in mid-career, Stephen fled from the Holy Land and returned to the West in disgrace. All of this is odd and perplexing and, although the historians of the First Crusade have paid little attention to his strange career,⁴ a detailed examination of Stephen's changing attitude toward the Crusade may illuminate some aspects of the movement and may show how, in this instance, the Crusade failed to keep the loyalty of one of the principal figures in the Crusading army.

I

Stephen of Blois was the eldest of the sons of Theobald III, Count of Champagne, Brie, Blois, and Chartres, by Theobald's first wife, Gersende.⁵ We know nothing of Stephen's early years up to 1081. In that year Stephen approached William the Conqueror to ask for and receive the hand of William's daughter, the formidable Adèle, in marriage. The Conqueror's consent to the union was granted. Stephen and Adèle were accordingly betrothed at Breteuil and married later at Chartres with due solemnity.⁶ Seven years later Stephen succeeded his father as Count of Chartres and Blois.

The new count was a man of great wealth and power: his castles, Guibert tells us, equalled in number the days of the year.⁷ He was, moreover, pious and generous to the Church, despite some passing discord with Ivo, the newly-elected Bishop of Chartres.⁸ Several of his contemporaries testify to his per-

of this letter published in the *Recueil des historiens des croisades, Historiens occidentaux* (5 vols. Paris 1844-1895) 3.885-887 [this collection is hereafter cited as RHC Occ.] is a conflation of Mabillon's and Bernier's text. The second letter was published in Luc d'Achéry's *Spicilegium* (first edition, 13 vols. [Paris 1655-1677] 4.257-258; second edition, 3 vols. [Paris 1723] 3.430) and in RHC Occ. 3.888-890 (this text is based upon that of d'Achéry which was taken from a now lost MS belonging to Adrianus Valesius). See HE 55, 76-77.

⁴ He is usually mentioned among the leaders of the Crusade, his desertion is normally commented upon, and he is then dismissed, sometimes with casual mention of his career in the Crusade of 1101. Thus, e.g., see Sir Stephen Runciman, *History of the Crusades* (Cambridge 1951-1954) I 164-168, 238-241, II 20-24, 30-31, 76-78; René Grousset, *Histoire des croisades et du royaume franc de Jérusalem* (Paris 1934-1936) I 22-29, 100-102, 226-232; Adolf Waas, *Geschichte der Kreuzzüge* I (Fribourg 1956) 141; Ferdinand Chalandon, *Histoire de la première croisade* (Paris 1925) 148-149, 153-158, 201, 208.

⁵ HE 48-49; *Histoire littéraire de la France* (Paris 1733-1927) 9.265-266.

⁶ Ordericus Vitalis, *Historia ecclesiastica* 5.11 (ed. Auguste Le Prevost, 5 vols. [Paris 1838-1855] II 393). The marriage produced four sons, William, Theobald, Henry and Stephen, the latter of whom became King of England.

⁷ Guibert of Nogent, *Gesta Dei per Francos* 1.15 (RHC Occ. 4.148).

⁸ For his relations with the Church, see *Histoire littéraire* 9.266-267; Ivo of Chartres, *Epistolae* 49, 86, PL 162.60-61, 107; J. Mabillon, *Annales Ordinis Sancti Benedicti* (Lucca

sonal charm, his prudence and modesty, his skill at arms, and his personal bravery.⁹ Stephen's own letters tell us much in addition about his personal qualities. From the letters we can see that he was, for one thing, a close observer and reporter of natural phenomena, which apparently interested him enough to be described in greater detail in his letters than in many of the chronicles and formal histories of other participants in the Crusade.¹⁰ The letters also show that Stephen was devoted to his rather domineering wife, that he entertained a nostalgic affection for his family and friends amid the distractions and novelties of the East, and that his character was marked by a decidedly naive and credulous streak.¹¹

II

In 1096 Stephen of Blois took the cross, under circumstances of which we know nothing.¹² He joined the expedition to the Holy Land which was led by his wife's brother, Robert Curthose, Duke of Normandy, and Count Robert II of Flanders.¹³ In September of 1096 the departure of this group of Crusaders began. Fulcher describes the scene at their leave-taking: the sound of sighs, tears, and lamentations filled the air as men left their wives, children, relatives, and friends out of love for God. A wife (perhaps Adèle) and husband (perhaps Stephen) spoke together of the date of the Crusaders' return. The husband promised to be back within three years and then commended his wife to the Lord, weeping and promising to return. The wife, fearing that she would never

1739-45) 5.278; E. Martène and U. Durand, *Amplissima Collectio* (Paris 1724-33) 1.621-623.

⁹ Guibert 1.15 (RHC Occ. 4.148); Ralph of Caen, *Gesta Tancredi* 15 (RHC Occ. 3.616); Baldric of Dol, *Historia de peregrinatione Jerosolimitana* 2.2 (RHC Occ. 4.34); Robert the Monk, *Historia Iherosolimitana* 6.15 (RHC Occ. 3.815).

¹⁰ Thus, when he crossed the Sea of Marmora, which he had been warned was rough and turbulent, he remarked that the information was false and that the crossing was no worse than a journey on the Seine or Marne at home; HE 139. He briefly remarks on the size of two rivers, the Euphrates and the Orontes, in his second letter; HE 150-152. He observes, with a distinct overtone of annoyance, that the winter in Syria is very much like winter in the West and that complaints about suffering from the heat of the sun are absurd; HE 150. Other similar instances are cited by Hagenmeyer, HE 53.

¹¹ Affection for Adèle is obvious in Stephen's letters: he addresses her as *dulcissimae amicae*, *dilectioni tuae*, *mi dilecta*, *dulcissimae atque amabilissimae coniugi*, *carissima*, etc.; HE 138, 149. The second letter is addressed to his *carrissimis filiis* and to *cunctis fidelibus suis, tam maioribus quam minoribus*, as well as to Adèle; HE 149. Stephen's naiveté is most strikingly shown in his first letter, where he relates, obviously with glowing pride, the reception accorded him by Alexius Comnenus in Constantinople; HE 138, and see below.

¹² Ordericus Vitalis 9.1 (ed. Le Prevost III 480) simply states the fact: 'Tunc Stephanus Blesensium comes, filius Teobaldi, comitis Carnotensis, qui gener erat Guillelmi, Anglorum regis, crucem Domini sumpsit, et peregre perrexit.'

¹³ Fulcher of Chartres, *Historia Hierosolymitana* 1.6.8 (ed. Heinrich Hagenmeyer [Heidelberg 1913]) 159-160. Stephen's forces may be estimated at some 2,000 or 2,400 men, 250 or 300 of whom were mounted cavalry, the rest infantry. See the estimates of Runciman, *History of the Crusades* I 337, 339.

see him again, wept for her husband, whom she had lost in life, as though he were dead.¹⁴

From Normandy, Flanders, and the territories of the count of Chartres, the Crusaders made their way to Pontarlier where Hugh of Flavigny parted company with them.¹⁵ From here they marched south across the Alps, and into Italy.¹⁶ Near Lucca the expedition met Pope Urban II, who was journeying through Lombardy. The Pope conferred briefly with Robert Curthose and Stephen of Blois and gave the army his apostolic blessing as they moved on.¹⁷ When they reached Rome, the Crusaders found the anti-pope Wibert's men in possession of St. Peter's Basilica. These latter stoned the Crusaders as they prostrated themselves in prayer in the church.¹⁸ A number of would-be Crusaders deserted from the expedition at Rome, while the rest headed south through Campania to Bari. Here the army was to cross the Adriatic to the Balkan coast, but, as Fulcher explains, the winter weather and the warnings of the sailors combined to convince the leaders that they should wait until spring before attempting to cross. Robert Curthose and Stephen of Blois accordingly withdrew to Calabria to await a more appropriate season for continuing their journey. Count Robert of Flanders, however, was hardier or more determined than his companions. He and his contingent crossed at once, without mishap, in November or early December 1096, and hurried ahead to Constantinople, while Stephen and Robert Curthose spent the winter with their Norman relatives in southern Italy.¹⁹ The long, leisurely winter, however, left the army at loose ends. Many of the lesser men sold their bows and returned home, disgraced, with pilgrims' staves in their hands.²⁰

With the coming of spring the Crusaders prepared to continue on their journey. In March 1097 the Norman Duke and Count Stephen again made their way to the seacoast and on Easter Sunday, 5 April, they embarked from Brundisium. Their embarkation was marred by a tragedy: one of the first ships to depart suddenly and inexplicably broke in two, and four hundred persons, men and women, drowned. This incident was sufficient to discourage a good many more of the Crusaders, who gave up the expedition and returned home, swearing that they would never again entrust themselves to the deceptive waters of the sea.²¹

The remaining pilgrims boarded their ships and set off with a great blast of trumpets. Four days later, without further mishap, they landed on the Balkan coast of the Adriatic. The ships bearing the Crusaders' host put in at two different ports and the army resumed its journey by land along the Via Egnatia, after making its rendezvous at Durazzo.²²

¹⁴ Fulcher 1.6.10-14 (ed. Hagenmeyer 162-163).

¹⁵ Hugh of Flavigny, *Chronicon* 2 (MGH SS 8.475).

¹⁶ For a discussion of their route, see Chalandon, *Histoire de la première croisade* 150-151, and C. W. David, *Robert Curthose, Duke of Normandy* (Cambridge Mass. 1920) 90-96.

¹⁷ Fulcher 1.7.1 (ed. Hagenmeyer 163-164).

¹⁸ Fulcher 1.7.1-3 (*ibid.* 164-166).

¹⁹ Fulcher 1.7.4 (*ibid.* 166-168); Ordericus Vitalis 9.4 (ed. Le Prevost III 486); *Charta Clementiae Comitissae Flandriae* in HE 142-143.

²⁰ Fulcher 1.7.5 (*ed. cit.* 168).

²¹ Fulcher 1.8.1-4 (*ibid.* 168-171).

²² Fulcher 1.8.5 (*ibid.* 171-172).

The overland journey through the Balkans was a grim march through mountains (which the Crusaders disliked because they thought they were inhabited by devils) and unpopulated country. When the army came to Thessalonika, four days of rest were allowed. The men then proceeded into Macedonia and finally arrived at Constantinople on 14 May 1097.²³

During the two weeks which the Crusaders spent at Constantinople, Stephen of Blois was entranced. He wrote a letter to his wife while he was in the city, but unfortunately that letter has perished. We know something from Fulcher, however, about the army's experiences in the imperial city. The Byzantine authorities were extremely cautious about allowing the men into the city itself. The army's camp was pitched outside of the walls and only five or six men were allowed to enter the town at any one time. Fulcher, who apparently was among those who had a chance to tour the city, reports being very much impressed by the wealth and marvels of the great metropolis, a city far larger and finer than any of the cities of the Western world at this time.²⁴

Meantime, while the army was sightseeing, its leaders conferred with one another and with the Byzantine Emperor Alexius. The Emperor's object in these discussions was to secure a guaranty from the Crusaders that Byzantine interests in Asia Minor and Syria would be respected. In return for such a guaranty, the Emperor was prepared to furnish guidance and assistance of various kinds to the Crusaders. Once these conditions were agreed to, Alexius advised the leaders of the Crusade on various methods of dealing with the Turks. He also presented the leaders of the army with valuable gifts.²⁵

All of this made a profound impression upon Count Stephen of Blois. The favors and the gifts bestowed by the Emperor, the diplomatic flattery of the Emperor's conversation — these things Count Stephen took at face value and thought that the favors were meant for him alone. The Emperor, he wrote to his wife a few weeks later, had received him like a son. There was no duke or count in the army in whom the Emperor placed more trust. The Emperor had even asked that Stephen send one of his sons to Constantinople and had promised to do great things for him. In truth, wrote Stephen to Adèle, there is no man now alive under heaven like unto the Byzantine Emperor. Even Stephen's late illustrious father-in-law, William the Conqueror, could not compare to the Byzantine monarch: 'My beloved, your father gave many great things, but he was almost nothing compared to this man.'²⁶ The diplomacy of Alexius Comnenus had made a sweeping conquest of this naive, credulous Crusader.

The Crusade was not all lavish gifts and honeyed words for Stephen, however. While he and the other Norman leaders were conferring with Alexius at Constantinople, the rest of the Crusading army had already opened a siege against the powerful city of Nicaea, the capital of the Turkish Sultinate of Rum. After a delightful fortnight in the Byzantine capital it was high time for the Normans and their men to join in the fighting.

²³ Fulcher 1.8.6-8 (*ibid.* 172-175).

²⁴ Fulcher 1.8.9-9.1 (*ibid.* 175-177).

²⁵ Fulcher 1.9.2-3 (*ibid.* 177-179); Anna Comnena, *Alexiad* 10.11.8 (ed. and tr. Bernard Leib, S.J. [Paris 1937-1945] II 234).

²⁶ HE 138-139.

On 28 May 1097, or thereabouts,²⁷ Stephen took leave of the Emperor, as of a father,²⁸ and crossed the straits to Asia Minor. Near Nicomedia the army passed, weeping as they went, the bones and skulls of the Peasant Crusaders, who had been slaughtered there nearly a year before.²⁹ Upon their arrival at Nicaea on 3 June, the Norman Crusaders were greeted warmly by the Crusading army already camped there. Stephen of Blois took up a position with the other Normans on the south side of the besieged city, flanked by the camp of the Provençal troops under Raymond of St.-Gilles, Count of Toulouse, on one side and Robert of Flanders on the other.³⁰

Stephen found the fortifications of Nicaea impressive: there were more than three hundred towers, he told Adèle, and the city was closed in by marvelous walls. After nearly five weeks of siege, when boats were brought overland to attack Nicaea from Lake Ascanius and the Turkish garrison surrendered to the Byzantines on 19 June, Stephen's admiration for the Emperor was further heightened. He explained in his letter to his wife that the Emperor had not come to take possession of the city in person, 'ne eum infinita populorum turba, quem tanquam patrem pium uenerabatur, exsultando comprimeret.'³¹ Rather, the Emperor stopped at a nearly island in the sea. All of the Crusading princes, save for Raymond of St.-Gilles and Stephen, flocked out to meet with him. Stephen proudly reports that the Emperor rejoiced greatly upon hearing that Stephen had remained behind at Nicaea, 'ne casu superueniret ciuitati et exercitui nostro inimicissima Turcorum turba.'³² The Emperor's rejoicing took the concrete form of a pile of gold — almost a mountain of it, according to the obviously impressed Stephen — which went to the Count of Chartres and Blois as his share of the spoils.

It was about 24 June when Stephen of Blois wrote the first of his two extant letters to his wife Adèle. At the close of this letter he appended an optimistic note: 'Dico tibi, mi dilecta, quia de saepedicta Nicaea usque Hierusalem V septimanas perueniemus, nisi Antiochia obstiterit nobis.'³³ In reality, almost two years were to pass before a Crusading army stood before Jerusalem — and when it arrived at the Holy City, Stephen of Blois was no longer numbered in its ranks.

Between 26 and 28 June the Crusaders began to leave Nicaea, heading into the interior of Asia Minor. On this march the army was divided into two groups, the one two days ahead of the other.³⁴ Stephen of Blois and the Normans were in the leading division, along with Bohemund, while the Count of Toulouse, the

²⁷ See HE 227 n. 26, for a discussion of the date.

²⁸ HE 139.

²⁹ Fulcher 1.9.4-5 (ed. Hagenmeyer 179-180).

³⁰ Fulcher 1.10.1 (*ibid.* 181); *Gesta Francorum et aliorum Hierosolimitanorum* 2.8 (ed. and tr. Louis Bréhier [Paris 1924] 38); Robert the Monk 3.2 (RHC Occ. 3.726); Baldric of Dol 1.24 (RHC Occ. 4.27-28); Albert of Aachen, *Historia Hierosolymitana* 2.21 (RHC Occ. 4.314).

³¹ HE 140.

³² HE 140.

³³ HE 140.

³⁴ Fulcher 1.11.1 (ed. Hagenmeyer 189-190); *Gesta Francorum* 3.9 (ed. Bréhier 42-44); Ordericus Vitalis 9.8 (ed. Le Prevost III 507-508); Baldric of Dol 2.1 (RHC Occ. 4.33); Albert of Aachen 9.38 (RHC Occ. 4.328-329).

papal legate, the Duke of Lower Lorraine, and the Count of Flanders, with their respective forces, were in the trailing section of the army.³⁶ On June 30 the scouts of the leading division reported that major Turkish forces were waiting to do battle with them on the plains ahead. After taking special precautions for guarding their camp, the Crusaders settled down for the night, and on the next morning, 1 July, they prepared to meet the enemy. Word was sent back to the trailing divisions to come forward quickly. From early morning to the middle of the day the first division of the army was badly battered by the enemy, whose tactics and whose use of arrows completely befuddled them. The arrival of the second division of the army served to confuse the Turks, however, and the attack slowed down. The surprise appearance of the papal legate, Bishop Adhemar of Puy, in back of the Turkish army was the final blow. At this the Turks turned and fled from the field, pursued by the exulting Crusaders.³⁶ Stephen of Blois, we are told, acquitted himself manfully in the battle.³⁷

From Dorylaeum, after a brief rest, the Crusaders marched on through Asia Minor to Pisidian Antioch and to Iconium. On this journey they were beset by many perils: heat, thirst, food shortages, and a dearth of mounts, so that many of the knights of the army were reduced to riding on oxen, while the baggage was loaded on goats, sows, or dogs.³⁸ They continued on their way past Heraclea, where they saw a sword-shaped apparition in the sky. Just beyond Heraclea a section of the army led by Duke Godfrey's brother Baldwin and Bohemund's nephew Tancred separated from the main force to make its way through the Cilician gates toward Antioch. The main army, including Stephen of Blois and his men, continued on to Caesarea Mazacha, then across the Anti-Taurus Mountains to Marash and the plains of Antioch. The advance guard of the army reached Antioch on the evening of 20 October 1097, and the main body of the army pitched camp there on the following day.³⁹ Stephen of Blois again camped with the other Norman leaders.⁴⁰

At Antioch, or possibly before reaching that city, Stephen of Blois had received a singular honor: the council of the princes of the various Crusading armies chose him as their 'leader.' This certainly does not mean that Stephen was the commander-in-chief of the army, but rather that he acted as the presiding officer at the assemblies of the leaders and that he had charge of provisioning and administering the housekeeping functions of the expedition.⁴¹ Stephen was

³⁶ Ordericus Vitalis, 9.8 (ed. Le Prevost III 507-508).

³⁸ Fulcher of Chartres 1.11.1-10, 12.1-6 (ed. Hagenmeyer 189-199; Raymond of Aguilers, *Historia Francorum qui ceperunt Iherusalem* 4 (RHC Occ. 3.240-241); *Gesta Francorum* 3.9 (ed. Bréhier 44-50). See also R. C. Smail, *Crusading Warfare 1097-1193* (Cambridge 1956) 168-170.

³⁷ Ordericus Vitalis 9.8 (ed. Le Prevost III 510); Fulcher 1.11.10 (ed. Hagenmeyer 197).

³⁸ Fulcher 1.13.1-5 (ed. Hagenmeyer 199-203); *Gesta Francorum* 1.10 (ed. Bréhier 52-56).

³⁹ Fulcher 1.14 1-2, 15.1 (ed. Hagenmeyer 203-206, 215-217; *Gesta Francorum* 4.10-11, 5.12 (ed. Bréhier 56-66).

⁴⁰ Albert of Aachen 2.38 (RHC Occ. 4.366); Ralph of Caen 49 (RHC Occ. 3.642).

⁴¹ HE 149: 'nam cuncti principes nostri communi consilio totius exercitus me dominum suum atque omnium actuum suorum prouisorem atque gubernatorem, etiam me nolente, usque ad tempus [29 March 1098] constituerunt.' Albert of Aachen 2.23 (RHC Occ. 4.316) calls

obviously much flattered by his election to this position and the fact of the election is itself sufficient to indicate that the other princes considered Stephen a well-trying leader.

As for Stephen, he found Antioch even more impressive and formidable than Nicaea: 'Antiochiam uero urbem maximam ultra quam credi potest fortissimam atque inexpugnabilem reperimus,' he wrote to Adèle.⁴² Stephen was certainly active at the siege of the city. After six months there he could proudly tell Adèle that he had participated in seven battles, all without losing a man.⁴³ He could also report with pride that his treasury now contained twice as much gold, silver, and other riches as she had given him when he left home.⁴⁴

As autumn turned into winter and winter into spring, the army's position worsened, however, and Stephen of Blois began to think longingly of home. The problems of supply, which were his special responsibility, became steadily more acute. Foraging parties had to scour the countryside farther and farther away from the city to secure even the barest minimum of food and supplies for the army. In the camps inflation soared and hunger became an ever present problem for the harassed quartermaster-general.⁴⁵ Battles and skirmishes were fought, but nothing was accomplished which seemed to bring the reduction of the besieged city much closer. The weather was vile, and the Crusaders were troubled by earthquakes and by the appearance of mysterious signs in the sky.⁴⁶ There were also rumors of the approach of a major Saracen army.⁴⁷ As conditions worsened the morale of the besieging army fell precipitously. In the spring of 1098 there was a rash of desertions from the Crusade: the poor left first, then the rich, according to Fulcher.⁴⁸

Stephen the *caput et primus consilio in omni exercitu*. Guibert of Nogent 1.15 (RHC Occ. 4. 148) says that 'eum [Stephanum] tota illa sancta militia, quum in procinctu contra Turcos existeret, dictatorem sibi ac magistrum efficerit.' See also Guibert 5.25 (RHC Occ. 4.199). The *Gesta Francorum* 9.27 (ed. Bréhier 140) alludes to the matter in passing, as does Raymond of Aguilers 11 (RHC Occ. 4.258). Nowhere is there any explicit mention of the time at which Stephen was appointed to this position, but Albert of Aachen inserts his statement cited above in his description of the armies at Nicaea, and Stephen himself seems to imply in his second letter to Adèle that his elevation to command took place before the army reached Antioch: at any rate he speaks of his position before talking about the siege of Antioch. The powers which he exercised are nowhere clearly defined. See also the cooperative *History of the Crusades* (ed. Kenneth M. Setton [Philadelphia 1955-]) I 277, and Runciman, *History of the Crusades* I 232 n. 1.

⁴² HE 150.

⁴³ HE 150; Hagenmeyer enumerates the seven battles in HE 280-281 n. 28. Ralph of Caen 53, 55 (RHC Occ. 3.646-647), also attests that Stephen acquitted himself with honor in various skirmishes at Antioch.

⁴⁴ HE 149.

⁴⁵ Fulcher 1.15.11-12; 15; 16.1-2 (ed. Hagenmeyer 221-226); *Gesta Francorum* 6.14 (ed. Bréhier 76).

⁴⁶ Fulcher 1.15.16; 16.3 (ed. Hagenmeyer 224, 226); Raymond of Aguilers 6 (RHC Occ. 3.245).

⁴⁷ *Gesta Francorum* 6.16-17 (ed. Bréhier 80-82).

⁴⁸ Fulcher 1.15.15; 16.6 (ed. Hagenmeyer 223-224, 228); *Gesta Francorum* 6.15-16 (ed. Bréhier 76-80).

By late March, Stephen of Blois had had his fill of the Crusade. Although his plans may not yet have been definitely formulated, he was already considering some plan to quit what seemed to him a hopeless cause. On 29 March he dictated to his chaplain, Alexander, a letter to his wife, and when Alexander had written out the letter, Stephen himself added a significant postscript to it:

Pauca certe sunt, carissima, quae tibi de multis scribo, et quia tibi exprimere non ualeo quae sunt animo meo, carissima, mando, ut bene agas et terrae tuae egregie disponas et natos tuos et homines tuos honeste, ut decet te, tractes, quia quam citius potero me certe uidebis. uale.⁴⁹

This last phrase must mean, if it means anything, that Stephen was already planning to leave the Crusading army. Two months, however, were to elapse between the date when this letter was written and the date of Stephen's departure. This time lapse seems significant. Presumably Stephen could have left at any time during those two months and, since he had apparently made up his mind to leave before the end of March, it seems probable that his delay had some purpose. I would suggest that Stephen, when he wrote to Adèle, was planning to leave the Crusade as soon as he was sure that Antioch was safely in the hands of the Crusaders; that, as a conscientious quartermaster-general, Stephen was awaiting the end of the current campaign to make the departure which he had decided upon; and that with the end of the Antioch campaign he considered that he had made his contribution to the Crusading endeavor.

His departure is dated definitely by Fulcher of Chartres: Stephen left the Crusading army on 2 June 1098, the day before the capture of Antioch.⁵⁰ It seems very unlikely that the date is simply coincidental. It also seems unlikely that Stephen was totally ignorant of Bohemund's dealings with Firuz, the Armenian officer who betrayed the garrison of Antioch.⁵¹ A more likely explanation of Stephen's conduct would be that his departure at this point was a matter of policy, of a plan which Stephen had hinted at in his letter to Adèle two months earlier. There is no reason, to judge from his earlier record, to think that Stephen was a coward or an utter fool. Certainly he had great flaws: he was naive and credulous, as has been said repeatedly, he lacked good judgment in many areas, but within his limits he had been (and was, in the future, to be again) a useful and effective fighter and leader. In all probability, Stephen, having once made up his mind to leave, awaited an opportunity to withdraw from the Crusade as gracefully as possible. The opportunity he sought came on 2 June, when the capture of the city of Antioch was virtually assured. Stephen had already been delayed for some months in carrying out his plans, and perhaps he was shrewd enough not to wish to become embroiled in the quarrels which were almost sure to break out once Antioch was actually in the Crusaders' hands.

Stephen left the camp at Antioch, therefore, while Bohemund was marshalling his troops, preparatory to slipping inside the city that night. The Count of Blois and a large group of men who followed him made their way to Alexandretta, a seaport about forty miles north of Antioch.⁵² The chroniclers of the Crusade

⁴⁹ HE 152.

⁵⁰ Fulcher 1.16.7 (ed. Hagenmeyer 228).

⁵¹ Although Runciman, *History of the Crusades* I 232-233, believes that he was (see also Runciman in Setton, ed. *History of the Crusades* I 317), there is no evidence to prove it.

⁵² *Gesta Francorum* 9.27 (ed. Brehier 140); Albert of Aachen 4.13 (RHC Occ. 4.398) says

are divided in their attempts to account for this action. Fulcher of Chartres disapproves and states that Stephen was much blamed for his action, but Fulcher does not try to account for it.⁵³ Albert of Aachen confesses himself unable to account for what Stephen had done, but adds that the reason given for his withdrawal from Antioch was illness.⁵⁴ Raymond of Aguilers and the *Gesta Francorum* ascribe Stephen's departure to cowardice.⁵⁵ Ralph of Caen adds that Stephen was bored.⁵⁶

On the night of Stephen's departure from the Crusading army, Bohemund and his troops secured entry into Antioch, and by the next day, 3 June, all of the city, save for the citadel perched atop Mount Silpius, was in their hands. This triumph was, however, short lived. On 5 June a Turkish relieving force under Kerbogha was at the Iron Bridge and by 7 June the huge Saracen army was camped outside the city's walls. The news of these developments soon reached Stephen at his new camp at Alexandretta: indeed, the author of the *Gesta Francorum* declares that the Crusaders in Antioch besought him daily to come to their assistance.⁵⁷ Stephen reconnoitered the situation at Antioch and when, from a nearby mountain, he saw the size of the Turkish army, he was struck with fear — as well he might have been, for Kerbogha's army, drawn from Mosul, Baghdad, Persia, Mesopotamia, and Damascus, was many times the size of Stephen's petty forces.⁵⁸ Rather than trying to alleviate the situation of the Crusaders in Antioch by pitting his tiny force against the huge besieging army, Stephen decided instead to flee. So far as he could see, all was lost. There seemed no possibility that his tiny forces could do more than irritate the mighty host of the Atabeg of Mosul. That Stephen could really do anything to help the army inside Antioch may well have seemed unlikely, even impossible. The Crusaders were worn out, their forces riddled by starvation, disease, and desertions. They were trapped inside the city with totally inadequate supplies — as their former quartermaster must well have known — and the enemy already had a sure foothold within the city itself.

In the face of these facts, Stephen decided against sending his own men to almost certain destruction to assist what he may very well have considered a cause already lost. He and his men straightway boarded ships bound for Constantinople.⁵⁹

that 4,000 men followed him to Alexandretta. See also Guibert of Nogent 5.25 (RHC Occ. 4.199); Ordericus Vitalis 4.9 (ed. Le Prevost III 537); Baldric of Dol 2.19 (RHC Occ. 4.55); Ralph of Caen 58 (RHC Occ. 3.649); Raymond of Aguilers 11 (RHC Occ. 3.258); Robert the Monk 6.15 (RHC Occ. 3.815).

⁵³ Fulcher 1.16.7 (ed. Hagenmeyer 228).

⁵⁴ Albert of Aachen 4.13 (RHC Occ. 4.398); Guibert of Nogent, Ordericus Vitalis, Balderic of Dol, and the *Gesta Francorum* also cite illness as a reason.

⁵⁵ Raymond of Aguilers 11 (RHC Occ. 3.258); *Gesta Francorum* 9.27 (ed. Bréhier 140).

⁵⁶ Ralph of Caen 58 (RHC Occ. 3.649).

⁵⁷ *Gesta Francorum* 9.27 (ed. Bréhier 140).

⁵⁸ Runciman, *History of the Crusades* I 341, while admitting that no actual evidence exists upon the subject, estimated Kerbogha's army at about 30,000 men. On his calculations, Stephen's forces, before he left Europe, may have been 2,000 or 2,400 men. See n. 13 above.

⁵⁹ Raymond of Aguilers 11 (RHC Occ. 3.258); Ralph of Caen 72 (RHC Occ. 3.658-659); *Gesta Francorum* 9.27 (ed. Bréhier 140); Robert the Monk 6.15 (RHC Occ. 3.815-816).

On their journey, while stopping at a Greek island, Stephen and his men learned that Alexius Comnenus with a numerous army was marching through Asia Minor toward Syria, seeking to join with the Crusaders, as the Emperor had earlier promised and, indeed, as he had sworn to do. Stephen, whose affection and admiration for the Emperor was no doubt still lively, hastened to join the Emperor's army. He met the Byzantine forces at Philomelium (Akshehir) in Asia Minor. There he informed the Emperor of what had happened: of the Crusaders' capture of Antioch, of the siege of the city by Kerbogha, and of his own estimate of the situation. Antioch, he declared, must already have been captured and the Crusaders killed or taken. Their escape from the situation was, he believed, impossible. The Emperor was shaken. He was far from his capital, his supply lines and communications were already considerably extended. To march ahead into hostile territory in the teeth of this news would be sheer folly. He ordered his army to return forthwith to Constantinople, devastating the countryside as they went. Stephen of Blois and his party accompanied him.⁶⁰

Stephen of Blois, after reaching Constantinople with the Emperor, presumably set out from there for the West. There is no account of his return save for a twelfth-century interpolation in the *Historia de Peregrinatione Jerosolimitana* of Bishop Baldric of Dol. This interpolation relates that Alexius Comnenus, jealous of the Franks' good fortune, ordered Stephen of Blois to be pursued, captured and brought back to him. The account relates further that Stephen had set out speedily and early and that he returned home by way of Italy.⁶¹

III

Stephen of Blois' reception upon his return to western Europe was cold and hostile. Whatever he may have expected, his contemporaries in the West

816); Albert of Aachen 4.37, 39 (RHC Occ. 4.414-415, 417); Ordericus Vitalis 9.10 (ed. L Provost III 551-553); Baldric of Dol 3.12 (RHC Occ. 4.71).

⁶⁰ Albert of Aachen 4.37, 39-41 (RHC Occ. 4.414-415, 417-418); *Gesta Francorum* 9.27 (ed. Brehier 140-146); Baldric of Dol 3.12-13 (RHC Occ. 4.71-73); Robert the Monk 6.15 (RHC Occ. 3.815-816); Ordericus Vitalis 9.10 (ed. Le Provost III 551-553); *Alexiad* 11.6.1-6 (ed. Leib III 27-30); Ralph of Caen 72 (RHC Occ. 3.658-659). The *Gesta Francorum* and the accounts derived from it insert at this point an account of the alleged lamentations of Bohemund's brother, Guido, over the report of the fall of Antioch. Bréhier believes — and I agree — that this account is an interpolation in the primitive text of the *Gesta*. See Bréhier's introduction to his edition of the *Gesta*, vii. The long speeches ascribed to Guido are not in the style of the anonymous author of this narrative and this section of the *Gesta* probably dates from the period of ill-feeling between Alexius and Bohemund. It may, in fact, represent a propaganda device inserted here with the intention of arousing Western readers of the *Gesta* against the perfidious Greeks. The lament-of-Guido episode in *Gesta Francorum* 9.27 (ed. Bréhier 142-144) may also be found, with some elaborations and variations, in Guibert of Nogent 5.27-28 (RHC Occ. 4.201), Robert the Monk 6.16 (RHC Occ. 3.816-817), Baldric of Dol 3.12-13 (RHC Occ. 4.71-73), Ordericus Vitalis 9.10 (ed. Le Prevost III 553) and Ralph of Caen 72 (RHC Occ. 3.658-659).

⁶¹ Baldric of Dol 3.20 (RHC Occ. 4.80): 'Imperator, ira aestuans, prosperitati Francorum invidens, sequi Stephanum comitem praecepit; et, si capi posset, ad se reduci mandavit. Sed Blesensis comes jam mane festinus transierat, et per Italiam repatriaverat.'

regarded him as a renegade who had deserted the Crusade at a crucial moment and who had left his vow as a Crusader unfulfilled. Pope Urban II had pronounced excommunication upon those Crusaders who left the ranks of the expedition before arriving at the Holy City of Jerusalem.⁶³ The papal legate on the Crusade, Bishop Adhemar of Puy, the Patriarch Simeon of Jerusalem, and other bishops had denounced the renegade Crusaders in their letters to the West, even before Stephen left Syria.⁶⁴ Worst of all, perhaps, his wife Adèle was furious. She raged at Stephen's cowardice and rated him roundly, and her voice was but one of the many which angrily denounced him.⁶⁵ His life back home was filled with reproaches and recriminations, not with that idyllic bliss which had seemed so attractive in the lonely camps of Syria. Before many months had passed, the Holy Land, with all its discomforts, no doubt began to seem more pleasant and more peaceful than Blois, or Chartres, or any of Stephen's three hundred and more castles.

Once the news of Jerusalem's capture was spread abroad, Stephen began planning a return to the East. Now, perhaps, he could fulfill his vow as a Crusader in comparative peace. Thus he could free himself from the ban of excommunication and also from Adèle's reproaches. When a new expedition to the East was in the offing in 1100, accordingly, Stephen joined the Crusade again.⁶⁶

If Stephen wrote any letters from his second Crusading expedition, none of them have survived, and his part in the Crusade of 1101 is known only from the occasional references to him in the accounts of contemporary writers, especially Albert of Aachen. How he traveled to Constantinople, when he arrived there, and what route he followed are details which none of the Chroniclers of the Crusade have filled in for us. That Stephen was at Constantinople in the late spring of 1101 is, however, well attested, and as the various forces, French, Provençal, Milanese, and German, arrived to take part in the Crusade, plans were made to cross again through Asia Minor to the Holy Land. At the behest of the Emperor Alexius, the Crusaders accepted Count Raymond of St.-Gilles and Stephen of Blois as their leaders. The two veterans of the First Crusade agreed to follow much the same route that they had earlier been over in 1097-1098.⁶⁷

The plans laid by Count Raymond and Count Stephen turned out, however, to be unacceptable to the large Lombard contingent of their army. The Lombards had learned of the capture of Bohemund in 1100 and of his imprisonment in Khorassan⁶⁷ and they were determined to try to rescue him. The folly of

⁶³ Ordericus Vitalis 10.11 (ed. Le Provost IV 67-68).

⁶⁴ See HE 142, 148-149.

⁶⁵ Ordericus Vitalis 10.19 (ed. Le Provost IV 118-119).

⁶⁶ Ordericus Vitalis 10.11, 19 (ed. Le Prevost IV 67-68, 118-119); Albert of Aachen 8.6 (RHC Occ. 4.563); Fulcher 2.16.1 (ed. Hagenmeyer 429); Bartolf of Nangis, *Gesta Francorum Iherusalem expugnantium* 56 (RHC Occ. 3.532).

⁶⁷ Guibert of Nogent 7.24 (RHC Occ. 4.243); Albert of Aachen 8.7 (RHC Occ. 4.563); *Alexiad* 11.8.2 (ed. Leib III 36).

⁶⁷ Bohemund was captured in July 1100 by Gümüshtigin, the Dānishmendid emir of Sebastia, who held him captive at Niksar in Pontus. See Fulcher of Chartres 1.35.1-4

leading the army deep into Anatolia on this errand was evident enough to the Byzantine Emperor, to Raymond, and to Stephen, all of whom tried vainly to dissuade the Lombards from the venture. Since the Lombards would not listen to reason on this matter, however, and since the Lombard contingent was probably the largest single force in the Crusading army, Raymond and Stephen at last reluctantly agreed to their demands.⁶⁸

At the beginning of June the army, after crossing the straits from Constantinople, left Nicomedia and headed toward Ankara. They successfully took Ankara on 23 June and restored the town to the Greeks. From Ankara the army went north to Gangra and, after passing there, became lost. Moreover, they began to run into increasing Turkish opposition. Their lines were harassed, their supplies were running short, and their morale was crumbling. After nearly six weeks of aimless wandering in eastern Asia Minor, the Crusade suddenly ran head-on into a major Turkish army.⁶⁹

Four days of fighting followed during early August, 1101. The Crusaders managed at least to hold their own in the fray, and Stephen of Blois particularly distinguished himself by rallying the men to arms and by rescuing Raymond of St.-Gilles when the latter was trapped by the Turks on a mountain peak. On the evening of Monday, 5 August, the Crusaders panicked, and during the night, led by Raymond of St.-Gilles, the army began to flee. Some, following Raymond, made their way to the port town of Bafra on the Black Sea and sailed back to Constantinople from there. Others followed Stephen of Blois and made their way to Sinope, from which place they returned to Constantinople by land. The great bulk of the army, however, was not so fortunate. Most of the men and practically all of the non-combatants were killed in flight or in their camps before they could flee. Only a sad and bedraggled remnant of the Crusading host reassembled in Constantinople that fall.⁷⁰

Late in 1101, having meanwhile been joined by the remnants of other Crusading expeditions, the princes who had escaped to Constantinople boarded ships and sailed to Syria. Early in 1102, Stephen of Blois and the others — save for Raymond of St.-Gilles⁷¹ — landed at St. Simeon, the port city of Antioch, where they were welcomed by Tancred.⁷² From Antioch they marched south to Tortosa, which they besieged and took. Raymond of St.-Gilles, who had rejoined

(ed. Hagenmeyer 343-347); Albert of Aachen 7.27 (RHC Occ. 4.524); Setton, *History of the Crusades* I 354; Runciman, *History of the Crusades* I 321-322.

⁶⁸ Albert of Aachen 8.7-8 (RHC Occ. 4.563-564).

⁶⁹ Albert of Aachen 8.8-13 (RHC Occ. 4.564-567); Guibert of Nogent 7.24 (RHC Occ. 4.243-344); *Alexiad* 11.8.2-3 (ed. Leib III 26-37); Setton, *History of the Crusades* I 355-356; Runciman, *History of the Crusades* II 21-23.

⁷⁰ Albert of Aachen 8.13-24 (RHC Occ. 4.561-574); *Alexiad* 11.8.3-5 (ed. Leib III 37-39); Fulcher of Chartres 2.16.2-6 (ed. Hagenmeyer 430-433); Setton, *History of the Crusades* I 356-358; Runciman *History of the Crusades* II 23-25.

⁷¹ Raymond of St.-Gilles was separated from the others en route and landed at Tarsus, where he was arrested and turned over to Tancred. Raymond was released after a short time, however, at the insistence of the other Crusaders. Albert of Aachen 7.42 (RHC Occ. 4.582-583).

⁷² Albert of Aachen 8.41 (RHC Occ. 4.582).

the other Crusaders only a short while before, remained behind the rest of the group at Tortosa to safeguard the city and, incidentally, to begin forming a private domain of his own, with Tortosa as its nucleus.

Near Beirut the Crusaders met King Baldwin I of Jerusalem, who escorted them to Jaffa, where they arrived on 22 March and where they remained for eight days. On Palm Sunday, 30 March, they journeyed to Jerusalem, where they fulfilled their vows by worshipping at the sacred shrines and where they celebrated the feast of Easter. Shortly thereafter the army broke up and its various members prepared to return to the West.⁷³

Stephen of Blois was among those who were returning to Europe, but, once at sea, he and his companions were turned back by contrary winds. Willy-nilly, Stephen returned to Jaffa to await a change in the weather. Back at Jaffa, however, he discovered that the Latin Kingdom of Jerusalem was faced with a grave crisis: an Egyptian invasion of the kingdom had begun and an Egyptian army was heading toward Ramleh. Baldwin of Jerusalem, hastening to meet the invaders, pressed Stephen and the others to join him. They agreed to do so and set out with Baldwin on 17 May 1102.⁷⁴

Baldwin at this point made a serious error. Disregarding the sober advice of Stephen and others, he decided to attack the Egyptians at Ramleh with the small group of knights available at Jerusalem and Jaffa, without waiting for his other forces to arrive. In making this decision, Baldwin entirely underestimated the size of the Egyptian army. Once he had sighted the Egyptian host he realized his mistake, but by then it was too late: he was already committed to a battle which was lost as soon as it began.⁷⁵ The two armies clashed, and in very short order most of the Christian force lay slain or wounded upon the field of battle. Those who survived the initial clash, including Stephen of Blois and King Baldwin, took refuge within the city of Ramleh.

The city could provide only temporary protection, however, since its fortifications were crumbling and dilapidated. King Baldwin fled from the city on the night of the battle (17 May) and succeeded in escaping to Arsuf. The men who remained at Ramleh held out only briefly against their assailants. When the Egyptians forced their way into the city on the next day, 18 May, the remaining defenders took up positions in a tower. The Egyptians then set fires and tried to drive them out with the heat, smoke, and fumes. At length the Crusaders surrendered, after the Egyptians had agreed to spare the lives of the men in the tower.⁷⁶

The promise of safety soon proved false, however, and most of the Christian captives at Ramleh were executed, though some were taken as captives to

⁷³ Albert of Aachen 8.42-45, 9.1 (RHC *Occ.* IV 582-584, 591); Fulcher 2.17.1-5 (ed. Hagenmeyer 433-435).

⁷⁴ Fulcher 2.17.3-4 (ed. Hagenmeyer 437-438); Albert of Aachen 9.2 (RHC *Occ.* 4.591-592); Ordericus Vitalis 10.20 (ed. Le Prevost IV 131-132).

⁷⁵ Fulcher 2.18.5-9 (ed. Hagenmeyer 438-440); Ordericus Vitalis 10.21 (ed. Le Prevost IV 132-133); Albert of Aachen 9.3-4 (RHC *Occ.* 4.592-593); Bartolf of Nangis 58 (RHC *Occ.* 3.533-535).

⁷⁶ Albert of Aachen 9.5-6 (RHC *Occ.* 4.593-594); Fulcher 2.19.1-5 (ed. Hagenmeyer 441-444); Ordericus Vitalis 10.21 (ed. Le Prevost IV 132-135).

Egypt.⁷⁷ For Stephen of Blois, Ramleh was his last battle. He was captured there by the Egyptians and was executed, probably at Ascalon on 19 May, though the various accounts differ somewhat among themselves over the mode of his execution.⁷⁸ His wife, Adèle, gave various properties to the Church, to endow Masses for Stephen's soul. Some years later, when her sons had grown to manhood, Adèle entered a convent to live out her days as a Benedictine nun.⁷⁹

IV

In summary, the Crusading career of Count Stephen of Chartres and Blois, as revealed in his own letters and in the accounts of the Crusading chroniclers, was that of an honest, loyal, but singularly unfortunate knight. There is little in his record, when it is seriously examined, to substantiate the charges of cowardice which have often been leveled at him. On the evidence here reviewed, no apologies are needed for Stephen's courage. His great failing, his overriding defect, was a want of foresight and of good political sense. He stands on his record not as a weak and faint-hearted Crusader, but rather as a naively courageous Crusader whose failures stemmed from his ineptitude as a judge of men and situations and who redeemed his failings in the only way he could, by devoted service, up to his death, in the Crusading cause.

True, Stephen did not seek out a Crusader's death; he stumbled into the situation in which he was killed, as he had earlier stumbled into the hornet's nest of reproach and recrimination which attended his premature return from the First Crusade. Nonetheless he persevered in what he judged to be a foolhardy campaign in 1102, perhaps because he had lost faith in his own judgment after seeing the results of his first Crusading venture.

⁷⁷ Albert of Aachen 9.6 (RHC *Occ.* 4.594) says that only one knight, a servant of the Byzantine Emperor, was spared; Ibn Al-Athir, *Kamel Allevarykh* (RHC, *Historiens orientaux* 1.215) says that 400 prisoners were executed and that 300 others were sent as captives to Egypt; Fulcher 2.19.2 (ed. Hagenmeyer 443) says that some were slain and some were taken captive, but does not refer to the truce agreement; Ordericus Vitalis 10.21 (ed. Le Prevost IV 135-137) says that the Christians captured at Ramleh were sent to Ascalon and that the more exalted of them (*sublimiores*) were lost, and that nothing certain was known of their fate.

⁷⁸ For a discussion of this, see Comte de Riant, 'La Legende du martyre en Orient de Thiemon, archevêque de Salzbourg (28 septembre 1102),' *Revue des questions historiques* 39 (1886) 218-237, especially 229-231. In summary the stories are these: Fulcher 2.19.4 (ed. Hagenmeyer 443) says that Stephen was killed in the battle of May 18; Ordericus Vitalis 10.21 (ed. Le Prevost IV 137), and Guibert of Nogent 7.24 (RHC *Occ.* 4.245) are uncertain about the date and circumstances of Stephen's death; Albert of Aachen 9.6 (RHC *Occ.* 4.594) is certain that Stephen was beheaded at Ramleh; and the *Gesta dominorum Ambasensium* (cited by Riant in 'La Legende du martyre,' 230-231) states that Stephen and others were shot to death with arrows at Ascalon. The most probable account would place his death at Ascalon on May 19, 1102, the day after the surrender of the defenders of Ramleh. The date of his death is confirmed by the necrology printed in the *Cartulaire de Notre-Dame de Chartres* (ed. E. de Lepinois and Lucien Merlet [Chartres 1862-1865]) III 115.

⁷⁹ Mabillon, *Annales O.S.B.* 5.86, 410.

At only one point did Stephen's career vitally affect the outcome of the Crusade: at Philomelium, where he reported to Alexius Comnenus that the Crusaders at Antioch were lost, the course of the history both of Byzantium and of the Latin States in the East was seriously changed. The results of Stephen's report to Alexius, the withdrawal of possible Byzantine military aid from the Crusaders in Syria were of the gravest possible consequence for both Crusaders and Byzantines. Here again, the part played by Stephen is characterized neither by cowardice nor by malice, but by ineptitude and poor judgment.

Stephen of Blois had, at least, the merit of consistency: throughout his career he was, in both senses of the term, an errant Crusader.

III

THE CRUSADE OF RICHARD I: TWO CANONICAL *QUAESTIONES*

THE interdiction of Normandy in 1192 and the imprisonment in 1196 of Bishop Philip of Beauvais, King Richard's erstwhile jailer, are two episodes relating to the Third Crusade which are discussed in the unpublished *Quaestiones Londinenses* of the British Museum, MS. Royal 9 E VII, fol. 191^r–198^v.¹ The *Quaestiones* were listed in the *Catalogue* of 1921 as "Cases in Canon Law,"² and the *sigla* of several of the masters were noted, but the first detailed discussion of the contents of this manuscript is found in Stephan Kuttner's magisterial *Repertorium der Kanonistik*, published in 1937.³ Stephan Kuttner established the English origin of the collection, listed the *sigla* of the various masters named in the disputations, and identified the episode of the interdiction of Normandy in 1192, thus establishing a *terminus a quo* for the collection. In his Maitland lectures at Cambridge in 1948 Walter Ullmann dealt with the Royal *Quaestiones* at some length and established a later *terminus a quo* in 1196 by his identification and analysis of the incident of the bishop of Beauvais.⁴ Kuttner again dealt with these disputations in an article published jointly by him and Eleanor Rathbone under the title, "Anglo-Norman Canonists of the Twelfth Century: An Introductory Study."⁵ Here for the first time an identification of the masters who appear in the disputations was attempted: John of Kent, John of Tynemouth, Simon of Southwell, Nicolas de l'Aigle, and Simon of Derby emerged from their centuries of obscurity once more to take a place as Oxford masters in the world of scholars. In 1950 C. R. Cheney added some further items of biographical information concerning two of the masters of the Royal *Quaestiones* as a result of his studies of the documents produced in the chanceries of the twelfth-century English bishops.⁶ To date, however, none

* I should like to express my thanks to Professor Stephan Kuttner for reading this paper in manuscript and making many helpful suggestions and emendations.

¹ The manuscript is written on vellum in a hand of the late twelfth or early thirteenth century. The eight folios measure roughly 32 cm. by 22 cm. and are ruled in double columns set approximately 1 cm. apart. The columns are variously ruled, with from 61 to 83 lines each. The manuscript is known to have belonged to St Augustine's Abbey, Canterbury, prior to its acquisition by the old Royal Library.

² Sir George F. Warner and Julius P. Gilson, *Catalogue of the Western Manuscripts in the Old Royal and King's Collections*, 4 vols. (London, 1921), I, 295.

³ Stephan G. Kuttner, *Repertorium der Kanonistik (1140–1234): Prodrum corporis glossarum*, *Studi e Testi*, 71 (Città del Vaticano, 1937), I, 251–252.

⁴ Ullmann's lectures were later published under the title *Medieval Papalism: The Political Theories of the Medieval Canonists* (London, 1949). The *Quaestiones Londinenses* are dealt with at pp. 13, 60, 74, 153, 191–193, 200–201.

⁵ *Traditio*, VII (1949–51), 279–358. The masters of the *Quaestiones Londinenses* are dealt with at pp. 317–327.

⁶ Christopher R. Cheney, *English Bishops' Chanceries, 1100–1250* (Manchester, 1950), pp. 11–14, 20, 129, 158. The material published by Kuttner, Rathbone, Ullmann, and Cheney is the basis for the biographical sketches of the masters of the Royal *Quaestiones* in A. B. Emden, *Biographical Register of the University of Oxford to A.D. 1500*, 3 vols. (Oxford, 1957–59).

of the disputations from the Royal manuscript have been published and, save for Ullmann's analysis of the incident of the bishop of Beauvais, no substantial treatment of the questions themselves has appeared.

The two questions to be discussed here are both concerned with episodes which are connected with the crusade of Richard I and each of them throws some badly needed light on the juridical status of the crusader at the end of the twelfth century. The texts of these two *Quaestiones*, in addition, add further information to what is known from the accounts of the chroniclers concerning the episodes to which they relate.

Chronologically the earlier of the events dealt with in these two *Quaestiones* is the Norman interdiction of 1192. *Quaestio* 39 of the Royal collection (fol. 195^{va}, line 43–195^{vb}, line 13) states the situation: King Richard was guaranteed protection of his lands by the Holy See while he was absent on crusade.⁷ During his absence a papal legate was sent to all of France and sought to enter Richard's Norman duchy. Permission, however, was refused and the legate was turned away by the seneschal of the duchy. The legate then held an inquiry into the state of Normandy and proceeded to excommunicate the seneschal. Later, at a council which the Norman bishops attended, the legate placed all of Normandy under interdict. The question at issue in the disputation is this: Is the interdict imposed by the legate under these conditions valid?

The argument in favor of the validity of the interdict rests upon three grounds. First it is argued that since the Norman duchy lay within the ambit of the legate's jurisdiction, it was an offence against the *jus gentium* for the seneschal to refuse him admission to Normandy. The seneschal had no right to refuse to receive the legate and, indeed, would for that reason alone fall under the sentence of excommunication *lata sententiae*. The person who repels a legate by force, as the seneschal is said to have done, is guilty of contumacy, which carries with it *ipso facto* the censure of excommunication, just as would a physical assault upon the legate's person. Second, it is argued that the papal protection granted to King Richard was designed to protect Richard's lands from injury, not to protect them from the legitimate exercise of papal authority. Third, it follows from this that if the seneschal's action is defensible it must be shown that he enjoys some special privilege to forbid a papal legate to enter the territory where he is in control. But since the seneschal has produced no such privilege, he falls under the penalties of the common law, which requires that the legate be admitted.

The contrary argument develops four lines of defence. The first of these alleges that the legate lacks the requisite authority to excommunicate the seneschal or to lay Normandy under interdict. To do this, it is argued, a special mandate would be required and this the legate does not have. The three other lines of defence rest upon the distinction between the lord of Normandy, namely King Richard, and the lord's representative, namely the seneschal. The first of these defences holds that the legate lacks the power to impose an interdict upon King Richard's lands unless King Richard is at fault. The misdeeds of the seneschal, it is argued, are not a sufficient reason for burdening the king's lands with the penalty of an interdict,

⁷ *Regesta pontificum romanorum*, ed. P. Jaffé, S. Lowenfeld, F. Kaltenbrunner, and P. Ewald, 2 vols. (Graz, 1956) [hereafter cited as JL], 16483.

for if the seneschal is at fault it is the seneschal who should be punished, not the lands belonging to his master. Next, it is argued that by proceeding in this fashion the legate has exceeded the powers entrusted to him by the pope, for he has molested the lands of the king of England without the king's knowledge. Last, it is argued that the seneschal acted as King Richard's procurator or attorney and that as a procurator he had no power to worsen his principal's position. Even if a procurator should be shown to have acted improperly, this ought not be accounted the fault of his principal, since the king in appointing a procurator to act for him cannot foretell future events. Therefore, the person who committed the fault, the seneschal, should be punished for his improper behavior, but the territory entrusted to him should be saved harmless from his delinquency.

The account of this episode as related in the *Quaestio* conforms in general rather closely to the accounts found in Roger de Hoveden's *Chronicle* and the *Gesta regis Henrici secundi*.⁸ The chroniclers refer to two papal legates, Cardinal Octavian, bishop of Ostia, and Cardinal Jordan of Fossa Nova, but the narratives make it plain that only Cardinal Octavian was involved in the interdiction of Normandy. The seneschal William is named by the chroniclers as the person responsible for turning back the legates at Gisors, on the grounds that their entrance into Normandy would violate the rights which King Richard enjoyed as a crusader. Cardinal Octavian, we are told, laid Normandy under interdict and excommunicated the seneschal. Cardinal Jordan, the other legate, refused to participate in this action, for he, we learn, "dilexit regem Angliae, et noluit sententiam dare in Normanniam nec quicquam molestiae inferre: unde rex Franciae iratus fugavit eum a regno suo."⁹ After rather lengthy negotiations which were carried on between Cardinal Octavian and Bishop Hugh of Durham, who represented Queen Eleanor and the English justiciars, an attempt was made to compromise the quarrel. The seneschal William, however, refused to agree to the legate's demands that he be admitted to the duchy, with the result that the seneschal remained under excommunication and Normandy remained under interdict until the pope finally lifted the interdict and forbade the legates to enter Normandy.¹⁰

We must conclude, therefore, that both Nicholas de l'Aigle, the master whose *siglum* is appended to this *quaestio*, and Pope Celestine III recognized the right of a crusader to bar even a papal legate from his domains during his absence on the Holy War. This is probably as generous an interpretation of the crusader's generally recognized right of immunity from interference with his domains as is anywhere documented in the literature dealing with the privilege of the cross.¹¹

The other *quaestio* to be considered here is number 38, of the Royal collection (fol. 195^{rb}, line 64–196^{va}, line 42), which treats of a legal question arising out of the

⁸ Roger de Hoveden, *Chronica*, ed. William Stubbs, Rolls Series, 4 vols. (London, 1868–71), III, 193–194; *Gesta regis Henrici secundi Benedicti abbatis*, ed. William Stubbs, Rolls Series, 2 vols. (London, 1867) II, 246–250. In addition JL 16854 and 16886 record two privileges granted to Norman religious houses for use during the interdict.

⁹ *Gesta regis Henrici*, II, 247.

¹⁰ *Gesta regis Henrici*, II, 250; Roger de Hoveden, III, 194.

¹¹ See E. Bridrey, *La Condition juridique des croisés et le privilège de la croix* (Paris, 1900), especially at pp. 120–135.

capture and imprisonment of Bishop Philip of Beauvais by Richard I's men on 19 May 1196. The *casus* is stated in the manuscript thus: the King of England while returning from his crusade was seized by the German emperor and imprisoned under the supervision of the bishop of Beauvais, who detained him for a long time. Meanwhile, the bishop harassed Richard's lands. When the king had returned to his holdings he invaded the bishop's territories, whereupon the bishop resisted. He armed himself and joined in a battle in which many were slain. At length the bishop was captured and jailed in his turn. At this point he appealed to the pope for his release. The issue disputed in the *quaestio* is whether or not this appeal was justifiable.¹²

The argument in favor of the bishop's appeal first attempts to rest the defence of the bishop's actions upon a plea of self defence: it is admitted that the bishop was fighting, but fighting in itself is not evil. The bishop of Beauvais, it is maintained, was fighting in defence of his lands and the possessions of the church. The bishop, indeed, must play two roles: his role as a bishop and his role as a secular magnate. In resisting the attack made upon him it is held that he was acting legitimately in his secular capacity. By taking up arms he did not renounce his episcopal office. Secondly it is argued that the respect due to the bishop's office forbids that he be made a slave of his captor. Likewise, since it is forbidden to retain control of the church's goods, so also the bishop, who is more precious, must not be detained in captivity.

In his negative argument Master Nicholas de l'Aigle rests his case first of all on King Richard's status as a crusader. A king who is fighting against the Saracens, he argues, enjoys papal protection and if, while on crusade, his possessions are seized, he enjoys the right to recover them. The right of recovery, according to Nicholas, implies the right to seize his adversary's lands and thus the attack upon

¹² This account of the events surrounding the bishop's capture agrees for the most part with the accounts of the chroniclers, although there is disagreement respecting a few details. Roger de Hoveden, iv, 16; Roger of Wendover, *Liber qui dicitur Flores historiarum*, ed. Henry G. Hewlett, Rolls Series, 3 vols. (London, 1886-89), i, 245-246; and Matthew Paris, *Historia Anglorum, sive, ut vulgo dicitur, Historia minor*, ed. Sir George F. Madden, Rolls Series, 3 vols. (London, 1866-69), ii, 59-60, both agree that it was John who made the attack on Beauvais. Matthew Paris in the *Chronica majora*, ed. Henry R. Luard, Rolls Series, 7 vols. (London, 1872-83), ii, 421, however, states that the attack was made "jubente rege Ricardo." All of the descriptions of the incident agree that the bishop's capture came as a result of a bloody battle in which most of the infantry forces involved were killed. Matthew Paris and Roger de Hoveden both relate that an appeal was made to the pope, although in Matthew Paris' account the appeal is said to have come from the chapter of Beauvais rather than from the bishop himself. According to Matthew, *Chron. maj.*, ii, 422, "Dominus autem papa . . . amicabiliter scripsit regi Ricardo pro episcopi liberatione, quem in epistola sua carissimum vocavit fratrem ac filium suum et ecclesiae, ut sic pronius flecteret regem ad parcendum. Praecepit igitur rex ob reverentiam Papae ut lorica episcopi tunc deponeretur et ipsi Papae praesentaretur, et diceretur, 'Vidi sit tunica filii tui sit an non?' Cui Papa, 'Non filius meus est vel ecclesiae; ideo ad regis voluntatem redimatur, quia potius Martis quam Christi miles judicatur.'" Roger de Hoveden, *Chronica*, iv, 21-24, presents the texts of a spurious letter in which the bishop requests papal intervention on his behalf and an equally spurious reply in which the pope refuses the request. Walter of Coventry in his *Memoriale*, ed. William Stubbs, Rolls Series, 2 vols. (London, 1872-73), i, 357, describes an attack led by the bishop of Beauvais upon Normandy, but Walter assigns this incident to 1188, prior to Richard's accession to the throne.

the bishop of Beauvais was justified. Secondly, the bishop's defence of himself is attacked: a bishop, Nicholas argues, should obey the evangelical (and canonical) counsel to turn the other cheek if attacked and he ought not to fight, even to defend himself. Moreover, since the bishop has elected to fight, he must accept the consequences of his action; thus, if he has been captured, he must bow to his adversary's right to enslave him, for he has brought this calamity upon himself. In addition, Master Nicholas argues that the bishop should be degraded from his office, because, for one thing, he has both caused and assisted in the perpetration of murder and, for another thing, he has renounced his clerical privileges by taking up secular arms. On this account the pope cannot and ought not lend him assistance, for the bishop, having broken the law, cannot claim the aid of the law to redress his losses.

Master Nicholas de l'Aigle, whose *siglum* is appended to both of the disputations under consideration here, was apparently a prominent member of the group of Oxford canonists who figure in the *Quaestiones Londinenses*. Seven of the *quaestiones* in the collection are attributed to him, nearly twice as many as are attributed to any of the other masters.¹³ Little is known of Nicholas' career save that he seems to have become dean of the cathedral chapter of Chichester in 1197 and to have remained in that position until his death in 1217. In 1209 he was elected

¹³ The masters of the Oxford group and the questions which bear their *sigla* are:

1. Master Nicholas de l'Aigle: *Quaestio* 20 (fol. 193^{rb}, l. 62—193^{va}, l. 8), *Quaestio* 38 (fol. 195^{rb}, l. 64—195^{va}, l. 42), *Quaestio* 39 (fol. 195^{va}, l. 43—195^{vb}, l. 13), *Quaestio* 40 (fol. 195^{vb}, ll. 15—46), *Quaestio* 41 (fol. 195^{vb}, l. 48—196^{ra}, l. 8), *Quaestio* 51 (fol. 197^{rb}, l. 56—197^{va}, l. 33), and *Quaestio* 53 (fol. 197^{va}, l. 66—197^{vb}, l. 40). For Nicholas' career see Kuttner and Rathbone, "Anglo-Norman Canonists," pp. 317, 320, and Emden, *Biographical Register*, I, 560.
2. Master John of Tynemouth: *Quaestio* I (fol. 191^{ra}, ll. 1—38) and *Quaestio* 36 (fol. 195^{ra}, l. 28—195^{rb}, l. 11). For his career see Kuttner and Rathbone, "Anglo-Norman Canonists," pp. 317—327; Cheney, *English Bishops' Chanceries*, pp. 11—14, 20, 129, 158; Emden, *Biographical Register*, III, 1923.
3. Simon of Southwell: *Quaestio* 8 (fol. 191^{vb}, ll. 16—40) and *Quaestio* 43 (fol. 196^{ra}, l. 49—196^{rb}, l. 44). There is also a reference to *Mag. S.* in *Quaestio* 45 at fol. 196^{ra}, l. 45 and a *brocardus magistri Simonis* is mentioned at fol. 195^{va}, l. 3. For what is known of Simon's career see Kuttner and Rathbone, "Anglo-Norman Canonists," pp. 326—327; Cheney, loc. cit.; and Emden, *Biographical Register*, III, 1704.
4. Simon of Derby: *Quaestio* 4 (fol. 191^{rb}, ll. 33—50) and *Quaestio* 5 (fol. 191^{rb}, l. 52—191^{va}, l. 25). See also Kuttner and Rathbone, "Anglo-Norman Canonists," p. 320, and Emden, *Biographical Register*, I, 571—572.
5. John of Kent: *Quaestio* 34 (fol. 194^{vb}, l. 43—195^{ra}, l. 6), *Quaestio* 35 (fol. 195^{ra}, ll. 7—27), *Quaestio* 37 (fol. 195^{rb}, ll. 12—63), and *Quaestio* 42a (fol. 196^{ra}, ll. 10—41). See also Kuttner and Rathbone, "Anglo-Norman Canonists," p. 320, and Emden, *Biographical Register*, II, 1037.
6. Magister Gregorius in *Quaestio* 18 (fol. 192^{vb}, l. 52—193^{ra}, l. 3) at fol. 192^{vb}, l. 62, and in *Quaestio* 24 (fol. 193^{vb}, l. 62—194^{ra}, l. 16) at 194^{ra}, l. 7. Also,
7. There is also mention of an unnamed master in *Quaestio* 10 (fol. 191^{vb}, l. 80—192^{ra}, l. 26) where, in the final line of the *Quaestio*, it is stated: "Dicit magister quod facienda est restitutio." Ullmann in *Medieval Papalism*, p. 200, noted what he took to be the *siglum* 'a' in two places: *Quaestio* 13 (fol. 192^{ra}, l. 72—192^{rb}, l. 37) at 192^{rb}, l. 21; and *Quaestio* 19 (fol. 193^{ra}, ll. 4—71) at l. 11. In the latter instance it seems most probable that "a" is to be read as an abbreviation for "autem" in the citation of C. 27 q. 1 c. 8 *Viduas autem*. In the former instance I believe that "a" should be read as part of the reference to "ff de noxalibus actionibus" (Dig. 9.4).

bishop of Chichester, but apparently he was never consecrated to the episcopal office. He may also have been the master of schools at Avranches whose name figures in a dispute concerning the bishopric of that city in 1197–98.

Nicholas goes beyond most of his contemporaries in his conception of the breadth of the crusaders' privileges. As is evident from his discussion of the Norman interdiction and again in his insistence upon the right of King Richard to take action against the bishop of Beauvais, Nicholas pushes the concept of the immunity of crusaders' property to the extreme limits. Indeed, many of his fellow canonists would not have agreed with Nicholas in his espousal of the crusader's absolute right to complete freedom from any type of intervention in his affairs during the period of his crusading service.¹⁴ Further, in his discussion of the imprisonment of the bishop of Beauvais, Nicholas takes another extreme position in his insistence that a bishop must not fight, even in self defence. Although his opinion was certainly shared by some of his contemporaries,¹⁵ nevertheless, as the opposing argument pointed out, "summus pontifex scit ita episcopos in exercitu a(r)mari . . . non debuit episcopus expectare qui non se defenderet nec deum temptare cum vitam suam sic possit conservare."

¹⁴ Bridrey, *La Condition juridique*, pp. 120–135; Eugenius III, "Quantum praedecessores" in Otto of Freising, *Gesta Friderici Imperatoris*, I, 35, ed. G. H. Pertz, *Monumenta Germaniae Historica, Scriptores Rerum Germanicarum* (Hanover, 1867), p. 57; M. Villey, "L'Idée de la croisade chez les juristes du moyen-âge," *Relazioni del X Congresso Internazionale di Scienze Storiche*, 5 vols. (Rome, 1955), III, 587–588; *Li Livres de jostice et de plet*, III, 5, ed. P. Chabaille (Paris, 1850), p. 110.

¹⁵ But see *Decretum Gratiani*, ed. E. Friedberg (Graz, 1959), C. 23 q. 1 *dictum Gratiani post c. 7*; D. 50 *dictum Gratiani post c. 35*; C. 23 q. 8 *dictum Gratiani post c. 20* and *glossa ordinaria* (ed. Lyons, 1555); C. 23, q. 8 c. 1, *glossa ordinaria* to *De episcopis*; Bernardus Papiensis, *Summa Decretalium*, 5. 10. 8 (ed. E. A. T. Laspeyres; Graz, 1956), p. 223; *Summa Magistri Rolandi* to C. 23 q. 8 (ed. F. Thaner; Innsbruck, 1874), pp. 96–98; *Summa Parisiensis* to C. 23 q. 1 pr.; C. 23 q. 8 v. *de episcopis* (ed. T. P. McLaughlin; Toronto, 1952), pp. 210, 220.

TEXTS

QUAESTIONES LONDINENSES

London. British Museum. Royal 9 E. VII. fol. 191^r–198^v

A

Quaestio XXXVIII

Fol. 195^{rb} (lines 64–69) — 195^{va} (lines 1–42)

195^{rb}

Rex anglie cum a peregrinatione ierosolimitana rediret ab imperatore alemanie captus est et in carcerem destrusus ibique per episcopum Beleuacensem diutius detentus. Terram etiam ipsius rex (francie)[*ms.*: anglie] consilio et suasionem eius episcopi inuasit. Rege postmodum reuerso Brebantones¹ terram prefati episcopi inuaserunt. Episcopus autem positus

¹ The "Brebantones" were active and vigorous enemies of ecclesiastical property and prerogatives who had made extensive attacks on churchmen and church property, for which they were condemned as heretics by canon 27 of the Third Lateran Council in 1179; Mansi, *Concilia*, XXII, 231–233. By this enactment, expeditions were authorized against the Brabantines and other similar groups and partial indulgences and other privileges similar to those enjoyed by crusaders were extended to those who took up arms against these enemies of the church. See also Charles Du Fresne Du Cange,

- 5 insidiis cum eis bellum init armatus et in conflictu illo multi occisi sunt. Ipse enim episcopus captus et in carcerem detrusus petit a papa liberationem. Queritur an possit.
- 195^{va} Quod possit, sic: Iste episcopus militauit et milicia in se mala non est, vt C. 23 q. j(per totum)² [ms.: possit], / / Noli³ et c. Militare.⁴ Iste autem episcopus potuit arma assumere tum propter patrie sue defensionem tum propter rerum ecclesie defensionem,
- 10 vt C. 23 q. iij, Maximianus.⁵ Vnde quouis vnus potuit (a) se vi vim repellere, vt ff ad legem aquiliam, Scientiam, ¶ Qui cum aliter;⁶ in Extrau. de his qui incidunt in canonem lata sententie, Si vero.⁷ Item rex euictus esse debuit terra sua non alienam causam vlciscendi inuadere, vt ff ad legem aquiliam, ¶ Qui cum aliter⁸ [deleted in ms.: in Extrau. de his]. Item precipiuntur episcopi insurgere (in) [ms.: est] brebanciones, vt in concilio lateranensi, Sicut (ait) Beatus leo.⁹ Vnde licet alias (bellum) [ms.: bellico] iuste inire non posset, potuit tamen ratione harum personarum propter earum odium. Item duplo fungitur officio: fecit istud non vt episcopus, sed vt comes vel vt miles, vt ff de adoptionibus, Si pater, ¶ Qui duos;¹⁰ ¶ xcij, Precipimus;¹¹ ff Quod (cuius) cumque univ(ersitatis).¹² Item in principio. Soluit itaque tamquam episcopus, domino monens: cesari
- 15 autem necessitas habet soluere quae [deleted in ms.: s] (c)esaris sunt, vt C. xxxij q. viii ¶ Ecce¹³ et ¶ Tributum.¹⁴ Vnde licet iure militari vsus sit, beneficio tamen episcopali non renunciauit, vt ff de testamento militis, Si miles.¹⁵ Item summus pontifex scit ita episcopos in exercitu a(r)mari. Vnde confessione hac tacite videtur et istud statuisse. Item non debuit episcopus expectare quin se defenderet nec deum temptare cum uitam suam
- 20 sic possit conseruare; C. xxxij q. iij Queritur,¹⁶ et C. xxij Si nulla.¹⁷ Item exemplo petri istud facere potuit et exemplo finees¹⁸ et pauli,¹⁹ vt C. xxij, q. viij, Legitur,²⁰ Scire,²¹ omnibus citatis. Item episcopus iste seruus fieri non potest. Episcopalis enim dignitas seruitutem remouet; precedentem facinus ergo repellit sequentem a curiali tamen certatione non liberat; vt ¶ liij, Si seruus²² et C. Ex antiquis.²³ Item res ecclesie non possunt

Glossarium mediae et infimae latinitatis, 10 vols. in 5 (Graz, 1954), s. v. Brabanciones; C. J. Hefele and H. Leclercq, *Histoire des conciles*, 11 vols. in 16 (Paris, 1907–52), v², 1108; Augustin Fliche and Victor Martin, edd., *Histoire de l'Église depuis les origines jusqu'à nos jours* (Paris, 1934–; in progress), ix², 167–168; Bernard Zeger Van Espen, *Observationes in canones vulgo Concilii Lateranenses III.*, can. 27, in his *Scripta omnia*, 4 vols. (Louvain, 1753), iv, 14–32, at pp. 31–32. The portion of this canon relating to the Brabantines was included in *Comp. I*, 5. 6. 7. (*Quinque compilationes antiquae*, ed. E. Friedberg [Graz, 1956]), although it was not, like the earlier part of the canon, carried over into the *Decretales Gregorii IX* (*Comp. I*, 5. 6. 6. = X 5. 7. 8).

² C. 23 q. 1 dictum Gratiani post c. 7.

³ C. 23 q. 1 c. 3 *Noli existimare*.

⁴ C. 23 q. 1 c. 5 *Militare*.

⁵ C. 23 q. 3 c. 2 *Maximianus episcopus*.

⁶ Dig. 9. 2. 45. 4 (Roman law citations are from the Mommsen-Krueger-Schoell-Kroll edition, of the *Corpus Iuris Civilis*, 3 vols., Berlin, 1954–59).

⁷ *Comp. I* 5. 34. 4 (= X 5. 39. 3); however the author of this disputation appears to have used the *Collectio Tanner* (Oxford, Bodleian Library, Tanner MS. 8) rather than the *Comp. I* as his source.

⁸ Dig. 9. 2. 45. 4.

⁹ *Comp. I* 5. 6. 6 (= X 5. 7. 8).

¹⁰ Dig. 1. 7. 15. 1.

¹¹ Apparently the reference is to D. 93 c. 26 *Precipimus ne diaconus*.

¹² Dig. 3. 4. 6.

¹³ C. 23 q. 8 dictum post c. 20.

¹⁴ C. 23 q. 8 c. 22 *Tributum*.

¹⁵ Dig. 29. 1. 3.

¹⁶ C. 22 q. 2 c. 22 *Queritur cur*.

¹⁷ C. 23 q. 8 c. 15 *Si nulla urget*.

¹⁸ Cf. Numbers 25: 7.

¹⁹ Cf. Acts. 13: 8–11.

²⁰ C. 23 q. 8 c. 13 *Legi syromasten*.

²¹ C. 23 q. 8 c. 8 *Scire vos oportet*.

²² D. 54 c. 20 *Si seruus sciente*.

²³ D. 54 c. 9 *Ex antiquis regulis*.

- 30 penes aliquem detineri, vt C. xiiij q. vltima, Comperimus;²⁴ de consecratione, di. j, Ligna;²⁵ ¶. de sacrosanctis ecclesiis, Sancimus nemini;²⁶ Nec ergo ipsum episcopum qui est preciosior, vt C. xij, q. j, Precepimus;²⁷ C. ne fideiussores vel mandatores <dotium> dentur, l. j;²⁸ C. de sacrosanctis ecclesiis, Sancimus nemini;²⁹ C. xvi q. j, cap. vltima.³⁰
- 35 CONTRA. ¶ Rex qui expugnauit saracenos protectionem habuit sedis romane, vt in concilio lateranense, Sicut <ait> Beatus, ¶ De <Brabantionibus> [ms.: Brocha].³¹ Cum ergo res sue interim essent occupate iustam habuit causam eos repetendi, vt C. xxi q. ij, Justum bellum,³² et C. Dominus noster;³³ et etiam loca a<d>versariorum suorum deprehend [ms.: and]i, vt C. xxij q. viij, Et pridem, in fine.³⁴ Nec interest quomodo istud fecerunt, scilicet insidiis vel alio modo: ff de captivis et post <liminio> et redemptis, Nichil interest.³⁵ Item episcopus ratione persone sue pugnare vel se defendere non debuit, sed
- 40 deum vltorem expectare; <percussus> [ms.: percussio] enim in vna maxilla prebere debuit aliam: C. xxij q. viij, Nimi [ms.: r] um³⁶ et cap. Cum a iudeis;³⁷ C. xxij q. j, ¶ j per totum;³⁸ C. xvi q. iij, Porro;³⁹ Di. xxxvi c. Si quis vult.⁴⁰ Item episcopus, si captus, capientis seruus est effectus: ¶ j, Jus gentium;⁴¹ in Inst. de iure personarum;⁴² ff de statu hominum;⁴³
- 45 et eo non obstante quod est episcopus et hoc propter suum delictum: vt ¶ liiij, Quis ad leges.⁴⁴ Item iste detineri potest quia peccauit, licet res ecclesie detineri non possint quia nec peccauerunt, vt C. vij q. j, Episcopus.⁴⁵ Item ipse culpa sua se in casum hunc ingessit et ideo excusari non debet. Item degradari debet quia eius auxilio homicidia erant perpetrata vel saltem causa ipsius; vt ¶ l. Sequis viduam;⁴⁶ in Extrau. de <depositione>
- 50 [ms.: purgatione] clericorum, Continebatur⁴⁷ et c. Presencium;⁴⁸ maxime cum qualitas persone peccatum aggrauare debeat. Item arma habuit secularia, vnde ecclesie armis et eius priuilegiis videtur renunciasset, vt C. xvij q. iij, Quisquis;⁴⁹ in Extrau. de vita et honestate clericorum, Statuimus;⁵⁰ C. xxi q. iij, Sine ornatu;⁵¹ in Extrau. de illis qui incidunt in canonem la<te sententie>, In audientia;⁵² ff de iniuriis, Item, ¶ Si quis virgines;⁵³
- 55 C. ad legem iuliam de adulteriis, Si ea.⁵⁴ Item summus pontifex nec potest nec debet [ms.: iustum] istum restituere cum minister laico fuerit et a laico captus, vt in Extrau. in depositione clericorum, Sacerdotibus.⁵⁵ Vnde cum in leges commisit, <frustra> [ms.: frustram] legis inuocat auxilium; ff de minoribus, Auxilium;⁵⁶ C. xvij q. iij, Frater noster;⁵⁷ in Auth. vt liceat matri et auie, ¶ Quia vero;⁵⁸ scilicet in O de prescriptionibus, ¶ Illud quoque.⁵⁹ Nicholas.⁶⁰

²⁴ C. 14 q. 6 c. 2 *Comperimus nullam*.

²⁵ D. 1 *De cons.* c. 38 *Ligna*.

²⁶ Cod. 1. 2. 21.

²⁷ C. 12 q. 1 c. 24 *Precepimus ut in potestate*.

²⁸ Cod. 5. 20. 1.

²⁹ Cod. 1. 2. 21.

³⁰ C. 16 q. 1 c. 68 *Quoniam quicquid*.

³¹ *Comp. I* 5. 6. 6.

³² C. 23 q. 2 c. 1 *Iustum est bellum*.

³³ C. 23 q. 2 c. 2 *Dominus Deus noster*.

³⁴ C. 23 q. 8 c. 17 *Et pridem*.

³⁵ Dig. 49. 15. 26.

³⁶ C. 23 q. 8 c. 1 *Nimum certe*.

³⁷ C. 23 q. 8 c. 2 *Cum a Iudeis*.

³⁸ *Dictum Gratiani ante* C. 23 q. 1 c. 1.

³⁹ C. 16 q. 3 c. 14 *Porro si de annorum*.

⁴⁰ D. 36 c. 3 *Si quis vult*.

⁴¹ D. 1 c. 9 *Jus gentium*.

⁵⁹ I cannot identify this reference, save to hazard the tentative suggestion that it might possibly refer to the "Brief tract de praescriptionibus" which is noted by Warner and Gilson, *Catalogue*, I, 312, in MS. Royal 10 B. IV, fol. 42^{r-v}, since this MS, like the *Quaestiones Londinenses* came to the Royal collection from St Augustine's, Canterbury.

⁶⁰ See above, pp. 447-448.

⁴² *Inst.* 1. 3-4.

⁴³ Dig. 1. 5.

⁴⁴ D. 54 c. 11 *Quis aut leges*.

⁴⁵ C. 7 q. 1 c. 28 *Episcopus in diocesi*.

⁴⁶ D. 50 c. 8 *Si quis viduam*.

⁴⁷ *Comp. I* 5. 10. 9 (=X 5. 12. 8).

⁴⁸ *Comp. I* 5. 21. 3 (=X 5. 25. 3).

⁴⁹ C. 17 q. 4 c. 21 *Quisquis inventus fuerit*.

⁵⁰ *Comp. I* 3. 1. 9 (=X —).

⁵¹ C. 21 q. 4 c. 4 *Sine ornatu*.

⁵² *Comp. II* 5. 18. 14 (=X 5. 39. 25).

⁵³ Dig. 47. 10. 15. 15.

⁵⁴ Cod. 9. 9. 22.

⁵⁵ *Comp. I* 3. 37. 8 (=X 3. 50. 2).

⁵⁶ Dig. 4. 4. 37.

⁵⁷ C. 17 q. 4 c. 10 *Frater et coepiscopus*.

⁵⁸ Auth. 8. 18. 1. (=Nov. 117. 1).

The Crusade of Richard I

451

B

Quaestio XXXIX

(Fol. 195^{va}, lines 43-68 — 195^{vb}, lines 1-13)

195^{va} Rege anglie [terminal ie marked for deletion in ms.] existente in peregrinatio [deleted in ms.: e]ne sua terre sue protectionem habuit a sede romana.¹ Interim legatus quidam ad totam galliam destinatus normaniam volens introire per senescalum normaniae est repulsus; quare una cum archiepiscopo et episcopis normanie pro statu terre appellauit.

5 Legatus autem nichilominus predictum senescallum excommunicauit. Postmodum autem Concilio turonis celebrato presentibus episcopis normanie et non contradicentibus prefatus le(ga)tus totam normaniam interdicto supponit. Queritur vtrum interdictum teneat. Quod teneat, sic: ex quo in terram galliam fuit destinatus per generalem illam clausulam nulla pars gallie omisso videtur, vt $\text{\textcircled{P}}$ xix, Si romanorum;² C. xii q. j, Dilectissimi,³ ergo

10 vero normania cum sit pars gallie. Item ius gentilium deliquit qui legatum repulit, vt ff j. $\text{\textcircled{P}}$ Jus gentium.⁴ Ergo nec normanniam cum sit pars galli [marked for omission in ms.: e] car(um); $\text{\textcircled{P}}$ xciiij, Siquis legatum;⁵ ff de legationibus, l. vltima.⁶ Item omnes alii eam receperunt preter normannos et turpis est omnis pars toti suo non congruens, vt $\text{\textcircled{P}}$ viij, Contra morem;⁷ $\text{\textcircled{P}}$ xix, In canonicis;⁸ $\text{\textcircled{P}}$ lxxv, Sane;⁹ in Con(pi)latione, Cum in cunctis;¹⁰

15 ff de pactis, Maiorem.¹¹ Nec obstat appellatio senescalli qui constat in malicia et contumelia sua perseuerare. Manifestum est enim illud notorium, vt C. ij q. vi, c. Diffinitam;¹² etiam l. Sicut etiam in Extrau.¹³ Item incidit in ea lata sententie, vt enim fiunt non solum qui verberat, sed etiam qui contumaciter repellit; et contumacis nulla est appellatio. Item propter delictum ipsius terra potest interdicti, vt C. xvi q. j, Considerandum,¹⁴ et C.

20 Si heredes¹⁵ et C. xvi q. vij, Si quis vestimentum;¹⁶ in Extrau., Ex literis venerabilis fratris nostri;¹⁷ C. xxiiij q. iij, Si habes.¹⁸ Item non tenet episocoporum appellatio interponita ne legatum admittant. Tenentur enim eum admittere, vt in Extrau. de electione et electi potestate, E[r]go.¹⁹ Item licet terra fuerit in protectione domini pape non ita est intelligenda vt ita sit in protectione ne verbum domini audiant et ne ibi predicetur, sed ne

25 iniuria ei inferatur; vt C. viij q. j, Audacter.²⁰ Item posterius mandatum priori preiudicat, vt ff de (iure) codiciliorum, Diuus.²¹ Item speciale mandatum derogat generali, vt in Extrau., quod sit officium eius a quo appellatur, Sicut forma ecclesia.²² Item [deleted in ms.: speciale mandatum] ius commune est vt legatus admittatur, nec ostendit senescallus priuilegium per quod a iure communi debet recedi, vt C. ij q. vi, l. Non solent, et infra:

30 Eius qui ideo.²³ //

195^{vb} CONTRA. Legatus iste speciale non habuit mandatum vt ita excommunicaret vel terram ita interdiceret. Vnde regem sine culpa sua vel terram eius ita molestare non debet; C. xvi q. j, Inuentum.²⁴ Item ratione senescalli terra interdicti non debuit. Peccata suos teneant autores: vt ff de penis, Sancimus;²⁵ C. j q. iij, Crimen.²⁶ Item ita iudicare

¹ JL 16433.² D. 19 c. 1 *Si Romanorum*.³ C. 12 q. 1 c. 2 *Dilectissimis fratribus*.⁴ D. 1 c. 9 *Ius gentium*.⁵ D. 94 c. 2 *Si quis autem legationem*.⁶ Dig. 50. 7. 18 (17).⁷ D. 100 c. 8 *Contra morem*.⁸ D. 19 c. 6 *In canonicis*.⁹ D. 65 c. 1 *Sane*.¹⁰ *Comp. I* 1. 4. 16 (=X 1. 6. 7).¹¹ Dig. 2. 14. 8.¹² Possibly C. 2. q. 6 *Dictum Gratiani postc. 41* §2.¹³ Possibly *Comp. I* 5. 2. 6 (=X 5. 3. 6).¹⁴ C. 16 q. 7 c. 35 *Considerandum est quatinus*.¹⁵ Cod. 7. 2. 12.¹⁶ Not identified.¹⁷ *Comp. I* 14. 17. 3 (=X 4. 16. 2).¹⁸ C. 24 q. 3 c. 1 *Si habes*.¹⁹ *Comp. I* 1. 4. 20 (=X 2. 24. 4).²⁰ C. 8 q. 1 c. 18 *Audacter*.²¹ Dig. 29. 7. 6.²² Perhaps *Comp. II* 1. 13. un. (=X 1. 30. 2) is meant.²³ C. 2 q. 6 c. 30 *Non solent*, §2.²⁴ C. 16 q. 7 c. 38 *Inuentum est*.²⁵ Dig. 48. 19. 41.²⁶ C. 1 q. 4 c. 6 *Crimen*.

- 35 iudicum est inaequale: C. j. q. iiij, ¶ Contra dominus.²⁷ Item si pecasset senescallus debuisset legatus suum peccatum super hoc consuluisse, vt C. vij q. j, Peruenit;²⁸ C. xxvij q. j, Si non.²⁹ Item fines mandati excessit: ff mandati, Diligenter.³⁰ Item esto quod nulla interposita esset appellatio si senescallus deliquisset. Rege non scitato terra sua inquietari non debuit immo ei denunciandum fuit, vt C. [deleted in ms.: Si quis] de in rem actio exerceri
- 40 debeat, Si quis alterius;³¹ et aliunde quam in proprium vnde cum contra leges illud factum sit pro illo habendum, vt C. xxv q. ij, Servatis,³² In galliarum;³³ ¶ viij, Vides.³⁴ Item procurator domini condicionem deteriore facere non potest: ff de procuratoribus, Procurator³⁵ et licet usque quam idoneus non fuerit procurator domino tamen non est imputandum qui eum edidit idoneum cum diuinare non potuit; C. xxij, q. j, Beatus;³⁶ ff ad
- 45 legem aquiliam, Si putator.³⁷ Item delinquens puniri debet, non res, vt C. xvi q. vi, Illud cognouimus;³⁸ in Auth. de mandatis principum, ¶ Non potest.³⁹ Nicholas.⁴⁰

²⁷ C. 1 q. 4 dictum Gratiani post c. 9.

²⁸ C. 7 q. 1 c. 20 Peruenit ad nos.

²⁹ C. 23 q. 5 c. 9 Si non licet.

³⁰ Dig. 17. 1. 5.

³¹ Cod. 2. 19. 2.

³² C. 25 q. 2 c. 6 Servatis privilegiis.

³³ C. 25 q. 2 c. 3 In Galliarum.

³⁴ D. 10 c. 10 Vides fili.

³⁵ Dig. 3. 3. 67.

³⁶ C. 22 q. 2 c. 5 Beatus Paulus.

³⁷ Dig. 9. 2. 31.

³⁸ C. 16 q. 6 c. 3 Cognouimus quod.

³⁹ Probably Auth. 3. 4. 5 (= Nov. 17) is meant.

⁴⁰ See above, pp. 447-448.

CORRIGENDA

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- line 12: lata: *read* late.
 line 12: euictus: *read* contentus.
 line 19: monens: *read* mores.
 line 27: Omnibus citatis: *read* Omni,
 Hortatu
 line 28: remouet; precedentem: *read*
 remouet, precedentem;

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- line 31: ¶.: *read* C.
 line 33: vltima: *read* ultimo.
 line 35: lateranense: *read* lateranensi.
 lines 44-45: hominum;⁴³ et: *read* hominum,⁴³
 eo.
 line 49: Extrau. de depositione: *read*
 Extrau. <de> depositione.
 line 50: delete [ms.: purgatione].
 line 58: q.iiij: *read* q.iiiij.

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- line 7: supponit: *read* supposuit.
 line 10: vero normania cum sit pars gallie.
 Item ius gentilium: *read* nec
 normania, cum sit pars gallie.
 Item <in> ius gentium.
 line 11: pars galli: *read* pars gallie.

- line 14: Con<pi>latione: *read* Con<cilio>
 lat<eranensis>.
 lines 15-16: senescalli qui constat in malicia et
 contumelia: *read* senescalli
 constat in malicia et contumacia.
 line 16: Diffinitam: *read* Diffinitua.
 line 17: 1. Sicut etiam: *read* 1. Sunt etiam;
 line 17: in ea lata sententie, vt enim fiunt:
read in canonem lata sententie ut
 enim facit.
 line 21: episocoporum appellatio
 interposita: *read* episcoporum
 appellatio interposita.
 line 25: C.viiiij: *read* C.viiij.
 line 27: Sicut forma: *read* Sicut <romana>
 [ms.: forma].

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- line 36: suum peccatum: *read*
 Su<mmum> po<n>t<ificum>.
 line 37: Si non: *read* Si homo.
 line 39: C. [deleted in ms.: Si quis] de:
read <ubi> [ms.: Si quis del.; de
 suprascr.]
 line 43: usque quam: *read* usquequaque.
 line 44: edidit: *read* <cr>edidit.

IV

RICHARD THE LION-HEART AND BYZANTIUM

The first thing one finds, when one looks into the formal relations between Richard the Lion-Heart and the Byzantine Empire, is that there were none, or at least none that have left any traces in the surviving official documents of the late twelfth century. This is rather curious, for when one pages through the *Registers* of Byzantine imperial documents compiled by Dölger,¹ one finds an abundant correspondence between the *basileus* and Frederick Barbarossa concerning the crusade in which both Richard and Frederick participated. Correspondence between the Byzantine *autocrator* and Richard's Muslim antagonist, Saladin, is also fairly plentiful. In 1189, on the eve of the crusade, the emperor and the sultan even concluded a treaty with one another for mutual protection against the crusaders.² Likewise, one finds occasional exchanges of correspondence between the Byzantine emperor and Richard's father, King Henry II. But of Richard's reign the Byzantine documents contain no memorials. This is an intriguing anomaly.

There was, of course, one well-known episode in Richard's crusade in which his pursuit of his own goals clashed directly and painfully with the interests of Byzantium and in which the Byzantines came off distinctly second-best. This was the affair of Cyprus: specifically, the capture of the island by Richard in 1191 and, in consequence, its permanent loss to the Byzantine Empire.

Historians have usually been inclined, in dealing with Richard's conquest of Cyprus, to treat it as an incidental affair, a side-issue as Sir George Hill called it.³ While no one denies that the conquest of Cyprus by Richard was important for the subsequent development of the Latin states and Western commercial interests in the eastern Mediterranean, the conquest itself is usually treated as an accident of sorts, a development which was unintended, dictated by Richard's spontaneous reaction to the events that followed a storm which blew some of the vessels of his fleet onto the Cypriot coast.

It may be worth while, however, to re-examine this sequence of events and to consider if it is possible that Richard's invasion of Cyprus was not, after all, entirely fortuitous.

First, we might begin by asking if there is any reason to think that Richard considered Byzantium hostile to his crusade. While there are only two scraps of evidence bearing directly on the matter, both of them point to an affirmative answer to the question. Richard almost certainly was aware of the reports made by French envoys to Constantinople concerning the treaty concluded between Saladin and Emperor

Isaac Angelos, and other reports of the negotiations circulated widely as early as 1188.⁴ Imperial obstruction of the crusade was virtually guaranteed by the treaty, and Richard, knowing of it, could scarcely have regarded the agreement as anything other than evidence of imperial hostility to his own venture.

Further, Richard's encounters with the Greek population in South Italy and Sicily confirm the impression that he considered the Greeks a menace to the crusade. In his dealings with the Greek population of this area, Richard sought to humiliate them systematically and even maliciously. The chroniclers testify to his "raving fury" and "horrible roars" against the Greeks. Richard's violent dislike and distrust of the Greeks took the practical form of a campaign against their strongholds, a campaign which he waged with relentless fury, complete success, and a keen eye for profitable gains.⁵ The Greeks, chastened by Richard's blitzkrieg, took up the fashion of calling him "the Lion,"⁶ and seem to have shared the sentiments expressed a few years earlier by Bertran de Born:

If Richard comes, I'll put my faith in God:
 Either I'll live or lie hacked on the sod.
 And if I live, great will be my bliss;
 And if I die, thank God for what I'll miss!⁷

In short, the notion that Richard started on his crusade with a decided anti-Byzantine bias seems credible and this notion is confirmed by his actions in South Italy and Sicily on his way to the Holy Land.

There is, however, no clear-cut evidence, one way or the other, to show whether Richard had designs on Cyprus at the beginning of his expedition. All that we know with any certainty is that before sailing from Rhodes Richard made inquiries about the situation on Cyprus and that subsequently a few of his ships sought shelter in Cypriot waters. Two or three of the ships broke up off Limassol on 24 April 1191 and the survivors of the wreck were imprisoned and maltreated by the despot of Cyprus, Isaac Comnenos. On 1 May the ship carrying Richard's sister and his latest fiancée, Berengaria of Navarra, anchored in the harbor of Limassol.⁸ Regardless of the storm which resulted in the shipwreck, Richard's fleet may have been heading for Cyprus in any event and Isaac Comnenos apparently anticipated an attack upon his island by the crusading forces.⁹ It may well be, then, that the accident of the storm and the mistreatment of the shipwrecked survivors simply provided a convenient pretext for Richard's invasion of Cyprus.

Richard himself, with the balance of his fleet, anchored at Limassol on 6 May, five days after the arrival of the ladies. He proceeded immediately to land some forces on the island and by dusk on the day of his arrival had succeeded in taking the city of Limassol. The English chroniclers report that the seizure of the city followed sharp fighting with Cypriot forces, although other sources indicate that there was little resistance and that the Cypriots actually welcomed Richard's arrival and deserted the cause of Isaac Comnenos.¹⁰

Following the capture of Limassol, Richard negotiated a truce with Isaac on terms which provided for a subvention by Isaac in support of the crusade, if not for his personal participation in the expedition.¹¹ Once he had gotten safely away from Richard's camp, however, Isaac renounced this agreement and commanded Richard to leave Cyprus at once. Isaac's foolhardy defiance brought immediate retribution.

Richard disembarked the remainder of his crusading forces and attacked immediately. The result was a series of crushing defeats for Isaac, who withdrew along the south-eastern coast of the island to Larnaka and Famagusta and thence inland toward Nicosia, pursued by Richard's henchmen. After another disastrous defeat at Tremithoussia, Isaac withdrew to Kantara. Following the loss of his strongholds at Kerynia and St. Hilarion, Isaac finally surrendered on 31 May or 1 June. The sole condition that Isaac insisted on was that he not be placed in iron chains. To this Richard cheerfully agreed and, luxuriating in his newly won wealth, gave orders to fashion gold and silver fetters for his captive.¹²

Meanwhile, Richard was under pressure to conclude his campaign quickly. The titular king of Jerusalem, Guy de Lusignan, together with other leaders of the Latin states, had come to Limassol and there had sworn their fealty to Richard on 11 May.¹³ They were anxious that Richard proceed speedily to Acre. A fresh delegation, led by the bishop of Beauvais, had met with Richard at Famagusta about 20 May and had presented an urgent summons from Philip Augustus to join him at Acre, where Philip had landed a month earlier. Richard brushed off these envoys curtly and declared that he had no intention of quitting Cyprus until it was completely his. It was foolish of them, he said, to try to interrupt his campaign. He added, significantly, that the conquest of Cyprus was vital to the security of the Holy Land.¹⁴ Despite his brusque rejection of these messengers, Richard felt constrained to minimize his delay. Immediately after the surrender of Isaac Comnenos, Richard named Robert of Thornham and Richard of Canvill as his justiciars on the island and ordered the Cypriots to shave off their beards as a sign of their subjection to a new master. Having "bestowed on the island the inestimable gift of his presence for five days after the Emperor had surrendered," Richard and his fleet sailed from Cyprus on 5 June, bound first for Tyre and then for Acre.¹⁵

Now what is one to make of all of this? It is plain that the seizure of Cyprus yielded a sizable short-run profit for Richard and he stated himself that he left the island in high good humor over his gains. Contemporary chroniclers recount with admiration the tales of the booty taken by Richard's forces. He laid claim not only to all the wealth accumulated by Isaac Comnenos, but also to one-half of the goods of all the Cypriots at large, in return for which he guaranteed that he would restore the laws which had prevailed when the island was subject to Manuel Comnenos. The gold and silk and jewels King Richard kept for himself, according to one writer, while he gave the silver and food supplies to his army, as well as passing out largesse to Guy de Lusignan and others.¹⁶

But Richard reaped additional profits from this venture, strategic and diplomatic profits as well as economic ones. He did not for long keep direct control of the island, finding it too troublesome to retain. His justiciar on Cyprus, Robert of Thornham, was threatened with a revolt shortly after Richard's departure for Acre. The Cypriots put forth a Greek monk, a relative of Isaac Comnenos, as their new emperor and attempted to overrun the occupation forces. Robert coolly put down the insurrection and hanged the monk who led the rebels.¹⁷ Still, the retention of the island was a nuisance and demanded the commitment of forces which Richard needed for his Palestinian campaigns. Moreover, Philip Augustus was being tiresome: he insisted that the terms of the treaty made between him and King Richard

at Messina before they sailed for the East entitled him to one-half of Richard's Cypriot holdings. Richard quarrelled with Philip twice on this matter, but finally silenced him after demanding that Philip give up one-half of Flanders in return for a partition of Cyprus; to this Philip would not agree.¹⁸

Thus when an offer came from the Templars to purchase Cyprus for 100,000 gold dinars, it was doubtless welcome, if indeed it was not actually inspired by Richard himself. He was as glad to let the island go at this bargain price, of which in fact only 40,000 dinars were ever actually paid to him.¹⁹ Even at that, the direct cash return on his Cypriot investment was very handsome. The money was a welcome addition to Richard's war chest and presumably did much to offset his other expenses on the crusade.

Beyond simple cash considerations, the possession of Cyprus by the Latins was a major asset to the crusaders. The easternmost point of the island, Cape St. Andreas, lay only one day's sail from the Syrian coast, given favorable winds, and Cyprus provided a highly convenient way station for maritime traffic. Until Richard's conquest, however, crusaders and merchants on their way to the Holy Land had been unable to count on a friendly reception there. The attitude of the Byzantine governors of Cyprus toward the crusades had been, at best, ambivalent; at worst, it had been actively hostile. Isaac Comnenos had antagonized both the Byzantines and the rulers of the crusaders' states since he had taken control of the island in 1185.²⁰ According to Sir George Hill, Isaac did not compare unfavorably with the Emperor Andronicus; but if this is the best that can be said for him, it is not extravagant praise. In truth, Isaac was popular with no one and every chronicler of the period, whether Greek or Latin, takes the opportunity to cast a few unflattering adjectives his way. Nicetas calls him "an inhuman and implacable butcher," while the author of the *Gesta Henrici II* accuses him of causing gold and silver images of himself to be worshipped in the churches and sums up his vivid and imaginative characterization of the despot by describing him as a *vas stercorum et esca vermium*.²¹

Western writers were convinced that Isaac was opposed to the crusades and they relate that he deliberately set out to hamper them in every imaginable way, even going so far as to murder his only son because the boy was well-disposed toward the Latins.²² Isaac was alleged to be in league with Saladin and to make a practice of detaining, imprisoning, and robbing any crusaders or other pilgrims who were so misguided as to land on Cyprus. However skeptical one may be of the details of the many unflattering stories told about Isaac, the unanimous testimony of his contemporaries makes it clear that his removal from Cyprus was felt to be a decided advantage to the crusaders and the Latin states.²³

In a more direct and personal way, it was also a gain for Richard the Lion-Heart. After his capture of Isaac at the end of May 1191, Richard kept the former Cypriot despot as his prisoner. In June he sent Isaac to Margat, where the Hospitallers guarded him until after Richard had left Syria; indeed, he was still in captivity as late as 1195.²⁴ Richard also kept control of Isaac's only surviving child, a daughter whose name we do not know. She accompanied Richard's wife and sister throughout their stay in Palestine. The girl then travelled to Rome with Queen Berengaria in 1193 and appears with her in Normandy in the following year. Thus, when Richard was captured

by Duke Leopold V of Austria, he was able to use Isaac Comnenos and his daughter as pawns in the bargaining over his ransom price. The Austrian duke was interested in the fate of the Cypriot leader, since they were related to one another through his mother's family. The former despot of Cyprus and his daughter thus played a role in the intricate maneuvering which finally led to Richard's release in the summer of 1193.²⁵

So far as Byzantium was concerned, the loss of Cyprus in 1191 was permanent. In part this reflects, of course, the weakened position of the Empire at the turn of the thirteenth century, under the rule of a series of weak or incompetent emperors (Isaac Angelos, 1185-1195; Alexios III, 1195-1203; Isaac Angelos and Alexios IV, 1203-1204; Alexios V, 1204) and then, after 1204, under Latin control. It is true that a few abortive efforts were made to re-assert Byzantine claims over the island. Guy de Lusignan, after purchasing Cyprus from the Templars, was apprehensive enough about Byzantine threats to consider an alliance with Saladin in order to safeguard himself against Byzantium.²⁶ At the same time, from the Byzantine side, Isaac Angelos was also bidding for the sultan's help in regaining Cyprus from the Latins.²⁷ Nothing came of either of these proposals (save possibly some private amusement for Saladin) and, in any case, the great sultan died shortly thereafter.

The Byzantines also attempted to persuade the papacy to bring pressure to bear on the Latin rulers of Cyprus to return the island to Imperial control. They found the pope as lukewarm as the sultan in his response to their proposals, and this approach likewise remained fruitless.²⁸ In any case Pope Innocent III was doubtless pleased to have Cyprus remain under Latin control, since in this way the Cypriot church could more easily be brought under the Roman obedience. At least one contemporary author, in fact, viewed Richard's conquest of the island as manifestation of Divine Providence, since it enabled the law of the Roman Church to be enforced on Cyprus.²⁹

In sum, then, one cannot say with complete certainty whether Richard expressly set out to conquer Cyprus or not, since our sources are not sufficiently explicit on this matter. It does seem certain, however, that the capture of the island not only reflected Richard's own anti-Greek attitudes, but also served his other interests. The subjection of Cyprus to Latin rule was a boon to the crusaders and to the Latin states and Richard himself professed to believe that he had been guided by divine assistance in his conquest of the island.³⁰ In the process he also made a tidy profit and secured other, longer range assets whose ultimate usefulness, to be sure, he could not accurately have foretold at the moment. While we cannot rule out the possibility that all of this came about as the result of the accidental circumstance that some of Richard's ships foundered on the Cypriot shore, it seems a shade more likely that Richard had made advance plans to neutralize Cyprus before he reached the Holy Land.

That such a project would harm Byzantine interests probably made the enterprise more, not less, attractive to Richard. What we know of his attitude toward the Greeks prior to the Cyprus episode gives us reason to believe that Richard regarded the Byzantines as potential enemies. The attitudes of those who accompanied him and who wrote the surviving accounts of his adventures in the crusade clearly reflect both distrust and active enmity toward the Byzantine Empire and its rulers and they missed no opportunity to vilify the Greeks, wherever

they were found. It is probable that the writers reflect the sentiments of Richard and his court.

Thus it appears probable that the crusading plans of Richard the Lion-Heart were directed against Byzantium, as well as against Islam. The Greeks, no less than the Muslims, were the victims of Richard's ambition and his aggressive designs. The execution of those designs assured the Latin conquerors a continued foothold in the eastern Mediterranean even after the last of the crusaders' cities on the mainland of Palestine had been recaptured by Islam. Richard thus made it possible to prolong the Holy War for nearly two centuries after the final fall of Acre.

NOTES

1. Franz Dölger (ed.), *Regesten der Kaiserurkunden des oströmischen Reiches von 565-1453* (*Corpus der griechischen Urkunden des Mittelalters und der neueren Zeit*, Reihe A., Abt. I; München, 5 vols., 1925-1965).

2. Dölger, *Regesten*, no. 1590 (2:95); Bahā' ad-Din, *An Nawadir as-Sultan-iyya wa l-mahasin al-yusufiyya*, in *Recueil des historiens des croisades* (Paris, 16 vols., 1841-1906; hereafter cited as *RHC*), *Historiens orientaux*, 3:172-75; Reinhold Röhricht (ed.), *Regesta regni Hierosolymitani* (Wien, 2 vols., 1893-1904; rp. New York, 1960), no. 496. A detailed account of these negotiations is given by Charles M. Brand, "The Byzantines and Saladin, 1185-1192: Opponents of the Third Crusade," *Speculum*, 37 (1962), 167-81.

3. *A History of Cyprus* (Cambridge, 4 vols., 1940-1952), 1:315-16. Likewise, George Ostrogorsky, *History of the Byzantine State* (trans. Joan Hussey; New Brunswick, 1957), pp. 361-62, refers to it as "a by product" of the crusade. A. A. Vasiliev, *History of the Byzantine Empire* (2nd ed., Madison, 1958), p. 447, also treats it as an incidental episode of the third crusade, as do most historians of the crusades, for example, Sir Steven Runciman, *History of the Crusades* (Cambridge, 3 vols., 1951-1954), 3:43-46; René Grousset, *Histoire des croisades et du royaume Latin de Jérusalem* (Paris, 3 vols., 1934-1936), 3:47-49; J. Prawer, *Histoire du royaume Latin de Jérusalem* (trans. G. Nahon; Paris, 2 vols., 1970), 2:64-65; Hans Eberhard Mayer, *Geschichte der Kreuzzüge* (Stuttgart, 1965), p. 138; A. S. Atiya, *Crusade, Commerce and Culture* (Bloomington, 1962), p. 81. Elizabeth Chapin Furber, "The Kingdom of Cyprus, 1191-1291" in *History of the Crusades* (ed. Kenneth M. Setton et al.; 2nd ed., Madison, 2 vols. to date, 1969-), 2:600, indicates that there is disagreement with this view, but avoids taking sides on the matter. The only major dissenter from the conventional view is N. Iorga, *France de Chypre* (*Collection de l'Institut Neo-Hellénique de l'Université de Paris*, 10; Paris, 1931), pp. 16-17.

4. The reports of the French envoys are given in the *Gesta regis Henrici II: Chronicle of the Reigns of Henry II and Richard I* ("Benedict of Peterborough") (ed. William Stubbs; *Rolls Series*, 49; London, 2 vols., 1867; rp. New York, 1965; cited hereafter as *Gesta*), 2:51-53. Among other things, the French envoys reported that: "Imperator promisit Saladino centum galeas, et Saladinus dedit ei totam Terram Promissionis, si imperator impedierit viam Francorum. Verissime vobis dicimus, quod si aliquis accepit crucem Constantinopoli, statim capiatur et in carcerem mittitur." See also the letter of Conrad of Mont Ferrat to Archbishop Baldwin of Canterbury in Roger of Wendover, *Flores Historiarum* (ed. Henry G. Hewlett; *Rolls Series*, 84; London, 3 vols., 1886-1889), 1:153, as well as *Chronica collecta a Magno presbytero*, in *Monumenta Germaniae historica, Scriptores*, 17:512; Brand, "Byzantines and Saladin," p. 168.

5. Richard of Devizes, *The Chronicle of Richard of Devizes of the Time of King Richard the First* (ed. and trans. John T. Appleby; London, 1963), pp. 17-25; *Itinerarium peregrinorum et gesta regis Ricardi*, 2:14-16 (ed. William Stubbs; *Rolls Series*, 38:1, London, 1964), pp. 157-64; *Gesta*, 2:127-29.

6. Richard of Devizes, *Chronicle*, pp. 16-17. Bertran de Born had referred to Richard as a lion and to Philip Augustus as a lamb in a *sirventes* as early as 1185; see Bradford B. Broughton, *The Legends of King Richard I, Coeur de Lion* (The Hague, 1966), p. 116.

7. Bertran de Born, "Miei sirventes vuolh far dels reis amdos" (trans. James J. Wilhelm in *An Anthology of Medieval Lyrics*, ed. Angel Flores; New York, 1962), p. 57.
8. *Itinerarium peregrinorum*, 2:27, 28, 30, pp. 180-82, 184-86; *Gesta*, 2:162-63; Richard of Devizes, *Chronicle*, pp. 35-36; Lionel Landon, *The Itinerary of King Richard I* (*Publications of the Pipe Roll Society*, 51; London, 1935), p. 48; Ambroise, *L'estoire de la guerre sainte* (ed. and trans. Gaston Paris; *Collection de Documents inédits sur l'histoire de France*; Paris, 1897), 11:1401-22.
9. Richard of Devizes, *Chronicle*, p. 35; *Gesta*, 2:162; *Itinerarium peregrinorum*, 2:28, 31, pp. 182, 188; and Ernoul, *Chronique d'Ernoul et de Bernard le Trésorier* (ed. L. de Mas Latrie; Paris, 1871), pp. 270-71, are ambiguous on the matter. *Le Estoire de Eracles Empreur*, 25:17, in *RHC, historiens occidentaux*, 2:159, mentions Isaac Comnenos' fears of an invasion by the crusaders. W. H. Rudt de Collenberg, "L'Empereur Isaac de Chypre et sa fille (1155-1207)," *Byzantion*, 38 (1968), 143 also states that Isaac feared an invasion by Richard and cites Ms. Fr. 8314 (3) of the *Fonds Colbert* in the Bibliothèque Nationale at Paris.
10. Richard of Devizes, *Chronicle*, pp. 36-37; *Itinerarium peregrinorum*, 2:32, pp. 188-91; *Gesta*, 2:163-64; Ernoul, p. 272, and Eracles, 25:22 (*RHC, historiens occidentaux*, 2:163-64) indicate that Isaac fled and that little resistance was offered. Neophytus, Πῆπλ τῶν κατὰ Χώραν Κύπρου σκαιῶν, says that the Cypriots deserted Isaac and went over to Richard: *RHC, historiens Grecs*, 1:561-62 (also ed. by Stubbs in *Itinerarium peregrinorum*, p. clxxxvii).
11. *Gesta*, 2:165-66; *Itinerarium peregrinorum*, 2:36, pp. 196-98; Richard of Devizes, *Chronicle*, p. 36; Eracles 25:24, in *RHC, historiens occidentaux*, 2:166; Ambroise, 11:1765-1830; *The Crusade and Death of Richard I*, 26 (ed. R. C. Johnston; *Anglo-Norman Texts*, 8; Oxford, 1961), p. 25.
12. *Itinerarium peregrinorum*, 2:38-48, pp. 199-203; *Gesta*, 2:166-67; Richard of Devizes, *Chronicle*, pp. 37-38; Ernoul, pp. 272-73; *Crusade and Death of Richard I*, 26, p. 26; Eracles, 25:25-26, *RHC, historiens occidentaux*, 2:167-69; Ambroise, 11:2034-46.
13. *Itinerarium peregrinorum*, 2:34, p. 195; *Gesta*, 2:165; Richard of Devizes, *Chronicle*, p. 37; Ernoul, pp. 272-73; Eracles, 25:25, *RHC, historiens occidentaux*, 2:167; Ambroise, 11:1701-34.
14. *Itinerarium peregrinorum*, 2:38, pp. 199-200; Ambroise, 11:1879-1906.
15. W. Stubbs, "The Medieval Kingdoms of Cyprus and Armenia," in *Seventeen Lectures on the Study of Medieval and Modern History* (Oxford, 1886), p. 162; *Itinerarium peregrinorum*, 2:38, 41-42, pp. 201, 203-205; *Gesta*, 2:167-68; Richard of Devizes, *Chronicle*, pp. 38-39; Eracles, 25:26, *RHC, historiens occidentaux*, 2:169; *Crusade and Death of Richard I*, 27, p. 27; Landon, *Itinerary*, pp. 49-50.
16. Richard sent a brief account of his adventures in Cyprus to one of his justiciars in England (there were five of them at the time) on 6 August 1191; *Epistolae Cantuariensis: The Letters of the Prior and Convent of Christ Church, Canterbury, from A.D. 1187 to A.D. 1199* (ed. William Stubbs; *Rolls Series*, 38:2; London, 1865), p. 347; Landon, *Itinerary*, p. 52; Richard of Devizes, *Chronicle*, p. 38; *Gesta*, 2:164, 168; *Itinerarium peregrinorum*, 2.41, pp. 203-204; *Crusade and Death of Richard I*, 27, p. 27; Ernoul, p. 273; Eracles, 25:26, *RHC, historiens occidentaux*, 2:169.
17. *Gesta*, 2:172-73; Ranulf de Canvill, Richard's other justiciar of Cyprus, died before the revolt broke out.
18. *Gesta*, 2:171, 183. For the agreement between Richard and Philip Augustus at Messina in March 1191 see Thomas Rymer (ed.), *Foedera, conventiones, litterae et cujuscunque acta publica* (3rd ed., The Hague, 10 vols., 1745; rp. Farnborough, 1967), 1:22-23. This document supports Richard's claim that he was not obliged to share with Philip any territorial gains made outside of Palestine.
19. The accounts of Richard's disposition of Cyprus are confusing and contradictory, but the analysis by Hill, *History of Cyprus*, 2:67-68, clarifies most of the problems. The most useful source for the transaction is Eracles 26:11 (*RHC, historiens occidentaux*, 2:189-90) and the versions in MS. C (*RHC, historiens occidentaux*, 2:184). Hill believes that Richard inspired Robert de blé, the Grand Master of the Templars, to make the offer to purchase the island (*History of Cyprus*, 2:34-35). The Templars in their turn found the island an embarrassment. They faced a fresh revolt on Cyprus at the beginning of April 1192, when their garrison on the island narrowly escaped annihilation (Eracles, 26:11 in *RHC, historiens occidentaux*, 2:190-91, and MS. D, in *RHC, historiens occidentaux*, 2:184-86; Ernoul, pp. 285-86). The Templars persuaded Guy de Lusignan to purchase Cyprus by paying them 40,000 dinars, the price they had paid to Richard, and assuming the obligation of making good the 60,000 dinars which the Templars still owed for the island (Eracles 26:11-12, in *RHC, Occ.* 2:191-192 and MS. D., in *RHC, historiens occidentaux*, 2:187-88; Ernoul, p. 286; Ambroise, 11:9119-26; *Itinerarium peregrinorum*, 5:37, p. 351). Guy took seisin of Cyprus in May 1192 and immediately wrote to Saladin to ask his help in governing the island. Saladin replied noncommittally but courteously; see Eracles, MS. D, in *RHC, historiens occidentaux*, 2:188. When Richard left Palestine

in October 1192, he turned over his interest in Cyprus to Henry of Champagne, who, in turn, exchanged this claim for the title to the County of Jaffa in 1197; see Hill, *History of Cyprus*, 2:38. Certainly control of the island could be profitable. At the death of Aimery in 1205 it was said to produce 200,000 bezants in annual revenue: Eracles, MS. G, in *RHC, historiens occidentaux*, 2:190-91.

20. Isaac Dukas Comnenos was the son of one of the nieces of the *basilius* Manuel I (1143-1180), who appointed him governor of Cilicia. He was captured by the Armenians, who later sold him to the Templars. His aunt, Theodora Comnena, persuaded the Emperor Andronicos to ransom Isaac, who then gathered a group of supporters and sailed with them to Cyprus. There Isaac presented forged imperial documents which purported to name him governor of the island. Once in power, Isaac furbished himself with the style and title of "Emperor" and proceeded to defy his benefactor, Andronicos. Andronicos was terrified of Isaac Comnenos, thinking that Isaac might be the person who, according to the sorcerers he had consulted, would topple him from the throne. Andronicos was mistaken, for his nemesis was Isaac Angelos. In 1186 Isaac Angelos attacked Cyprus, but his forces were repulsed by those of Isaac Comnenos. See *Gesta*, 1:254-55; Dölger, *Regesten*, nos. 1560, 1630 (2:90, 102); Eracles, 25:13, in *RHC, historiens occidentaux*, 2:18-20; Ernoul, p. 91; Neophytus, in *RHC, historiens Grecs*, 1:561 (also ed. Stubbs, p. clxxxvi); Hill, *History of Cyprus*, 1:312-14; Rudt de Collenberg, "L'Empereur Isaac de Chypre", pp. 123-79 gives a full-scale account of his career.

21. Nicetas Choniates, *Historia*, in *RHC, historiens Grecs*, 2:336; *Gesta*, 1:261-62. Hill, *History of Cyprus*, 1:313 n. 1, lists a few of the other crimes of which Isaac was accused, such as uxoricide, unnatural sexual relations (*κοίταις ἀθεμίτοις*), ravishing virgins, robbing the wealthy of their possessions, and reducing them to penury. He was also liable to paroxysms of rage, during which he foamed at the mouth.

22. *Gesta*, 1:261.

23. *Itinerarium peregrinorum*, 2:27, 29, 3:2, pp. 180, 183, 212; Eracles, 25:18, 19, 21, in *RHC, historiens occidentaux*, 2:160, 161, 163; Ambroise, 11:1385-1400.

24. *Gesta* 2:167-68; Eracles, 25:26, in *RHC, historiens occidentaux*, 2:168-69; Neophytus in *RHC, historiens Grecs*, 1:562 (also ed. Stubbs, p. clxxxix); Landon, *Itinerary*, pp. 50, 106; Hill, *History of Cyprus*, 1:320-21, 2:63; and *RHC, historiens Grecs*, 2:488-89. After his release in 1195, Isaac sought in vain for Turkish support in order to recapture Cyprus. He died, perhaps of poisoning, sometime in 1195.

25. On the relationship of the Cyprus situation to Richard's ransom, see especially Heinrich Fichtenau, "Akkon, Zypern und das Lösegeld für Richard Löwenherz," *Archiv für österreichische Geschichte*, 125 (1966), 11-32. Isaac's daughter subsequently had a bizarre career. She was apparently freed at Richard's death in 1199 and for a time was married to Count Raymond of Toulouse. The marriage was short-lived and in 1202 the Cypriot princess married a Flemish crusader named Baldwin, who was related to Count Baldwin of Flanders. In 1203 the princess and her most recent husband returned to Cyprus, where Baldwin tried to persuade King Aimery (who had succeeded Guy de Lusignan in 1194) to turn the island over to him and his wife as the rightful heirs of Isaac Comnenos. Aimery, understandably enough, told Baldwin that he was mad and suggested that he and his wife depart from Cyprus forthwith. Baldwin and Isaac's daughter then crossed over to Armenia. Of their later fortunes we know nothing. See *Itinerarium peregrinorum*, 2:39-41, pp. 201-204; *Gesta*, 2:167-68, 182, 190, 235; Eracles, 28:5, in *RHC, historiens occidentaux*, 2:256-57 (repeated verbatim by Ernoul, pp. 352-53); *Crusade and Death of Richard I*, 26, p. 26; Landon, *Itinerary*, pp. 50, 53, 73, 75, 78, 100; Hill, *History of Cyprus*, 1:32 n. 1, 2:38 n. 2 and 63-64; G. Schlumberger, "Les Aventures d'une princesse byzantine de Chypre à l'époque des croisades" in his *Recits de Byzance et des Croisades*, 1st ser. (Paris, 1923), pp. 131-42; Rudt de Collenberg, "L'Empereur Isaac de Chypre," pp. 123-79.

26. Eracles, MS. D, in *RHC, historiens occidentaux*, 2:188; Hill, *History of Cyprus*, 2:38-39.

27. Baha, ad-Din, in *RHC, historiens orientaux*, 3:299; Landon, *Itinerary*, p. 63. The entries in Dölger, *Regesten*, nos. 1608, 1612, and 1616 (2:98-101) probably relate to these negotiations.

28. Dölger, *Regesten*, no. 1654 (2:107); A. Potthast (ed.), *Regesta pontificum Romanorum*, no. 1332 (Berlin, 1874-75; rp. Graz, 1957); Röhricht, *Regesta*, no. 782; Hill, *History of Cyprus*, 2:38, 62-63.

29. Eracles, MS. D, in *RHC, historiens occidentaux*, 2:165.

30. *Epistolae Cantuarienses*, p. 347: "Hinc ergo in tantae vindictae injuriae nec indigne accensi, divino adjuti suffragio, cum hoste jam dicto congressum accipimus, festinam adepti victoriam, et ipsum victum ac vinctum tenemus, et filiam suam unicam, totamque insulam Cypri cum universis munitionibus nobis subjugavimus."

The Army of the First Crusade and the Crusade Vow: some reflections on a recent book

THE soldiers and pilgrims who made up the army of the first crusade made vows at the beginning of their expedition which bound them to march to Jerusalem and to liberate the Holy City from its Muslim rulers. This has generally been the opinion held by historians who have studied the first crusade. That opinion has recently been challenged in a book whose arguments, if accepted, would revise in a basic way the conventional picture of the votive obligations assumed by the participants in the first crusade.

The book in question is by Dr. Albrecht Noth, whose study was accepted in 1964 as a doctoral dissertation at the University of Bonn. The published work, under the title *Heiliger Krieg und heiliger Kampf in Islam und Christentum*, is a revised version of Dr. Noth's original work.¹ As the title indicates, the principal topic which Noth treats in his book is the idea of holy war and holy battle and he undertakes to compare the treatment of these themes by both Muslim and Christian writers in the period prior to the first crusade. Noth is able to point to some interesting and suggestive parallels in Christian and Muslim writing on these two major themes, but he cannot demonstrate any direct influence of Muslim notions of the holy war upon the holy war and holy battle ideas current in eleventh-century Christendom. His argument concerning the vows of the crusaders in the first crusade is developed as a subsidiary thesis to his central theme. Because this subsidiary thesis touches upon some significant problems in the history of the crusades and also because it raises some methodological questions, an analysis of his treatment of crusaders' vows seems to be in order.

In outline, Dr. Noth argues that the crusade vow was in no sense an instrument of Pope Urban II's crusade policy. Indeed, he believes that the pope had not even conceived of the crusade vow when he proclaimed the first crusade at Clermont in 1095. Rather, Noth maintains, the crusade

¹ The book bears the subtitle, *Beiträge zur Vorgeschichte und Geschichte der Kreuzzüge*. It was published at Bonn in 1966 and is vol. 28 of the "Bonner historische Forschungen" series.

vow was a product of the first crusade expedition's needs and experience. In his view there is no reliable evidence at all that the vow was even mentioned by Pope Urban at Clermont or subsequently. There is, of course, the inconvenient fact that in his letter to the Flemings in December 1095, about a month after the proclamation of the crusade of Clermont, Pope Urban spoke of a *votum* to participate in the crusade expedition.² Noth explains away this difficulty by interpreting the word *votum* in this letter to mean "wish" or "desire", a usage for which there are indeed some respectable precedents. Having dismissed this reference as inapplicable, Noth maintains that there is no further evidence for the existence of a crusade vow in the first crusade until after the capture of Antioch in the summer of 1098. At that point, he continues, the crusading princes, who learned that the armies which they led might disintegrate, required some technique to hold their forces together on the next stage of their campaign through the enemy-held territories of Syria and Palestine. The princes, then, hit upon the idea that they might treat the taking of the cross as a *de facto* assumption of a votive obligation. Noth believes that this scheme of the princes was not immediately accepted by the army and he argues from the evidence in the letters of Bishop Anselm of Ribemont that as of the summer and early autumn of 1098 no agreement existed among the ranks of the crusade concerning any obligation which arose from taking the cross.³ The letter directed by the crusading princes to Pope Urban II in September 1098 is construed by Dr. Noth as an appeal for a declaration by the Pope that such a votive obligation did in fact exist and that it was binding upon all crusaders.⁴

When he reads a further papal letter, this one addressed by Pope Paschal II to the French hierarchy in December 1099, Dr. Noth finds further support for his theory. In this document, he argues, Pope Paschal distinguished three classes of crusaders: (1) potential crusaders, those who had not yet taken the cross: they were urged to do so; (2) laggard crusaders, those who had taken the cross but had not yet set out for the Holy Land: these were to be encouraged to commence their journey and, if they failed to do so, they were to be judged *infames*; and (3) renegade crusaders, those who fled from the siege of Antioch: they were to return to the Holy Land,

² Heinrich Hagenmeyer, ed., *Epistulae et chartae ad historiam primi belli sacri spectantes* [hereafter *HEp*] (Innsbruck, 1901), p. 137: "si quibus autem uestrum Deus hoc uotum inspirauerit, sciant cum in beatae Mariae Adsumptione cum Dei adiutorio profecturum eiusque comitatu tunc se adhaerere posse."

³ Epist. 2 in *HEp*, pp. 156-160.

⁴ *HEp*, pp. 161-165.

but if they failed to do so they were to remain excommunicated.⁵ Dr. Noth takes the distinction between classes (2) and (3) to be clear proof of the correctness of his belief that as of 1099 the papacy did not recognize the existence of a votive obligation which was binding on crusaders. In Noth's view, laggard crusaders were subject only to the relatively mild penalty of *infamia*, while renegade crusaders were subject to the full rigors of excommunication. This, he believes, would necessarily exclude the notion that the papacy at this time recognized any obligation flowing from a vow which was assumed in effect by taking the cross. Only actual participation in the crusade, apparently, created so serious an obligation that its infraction resulted in excommunication. The exclusion of poor crusaders from the categories of those to be punished for non-participation Dr. Noth takes to be further evidence that at this time the act of taking the cross implied no necessary votive obligation.

The development of the crusade vow, Dr. Noth believes, was carried a step further in 1100, when the Synod of Anse decreed that all of those who had vowed to go on crusade and then failed to do so were to be excommunicated.⁶ The final stage of this development was concluded, according to Noth's theory, only during the pontificate of Callixtus II, when a formal papal statement finally defined the sanction of excommunication for those who failed to fulfill a crusade vow.⁷ Thus far Dr. Noth.

⁵ *HEp*, p. 175: "omnes ergo regionum uestrarum milites in peccatorum suorum remissionem uel ueniam cohortamini, ut ad illam matrem nostram Orientalem ecclesiam studeant festinare; eos praesertim, qui huius militiae uoto crucis signa sumpserunt, illud properare compellite, nisi paupertatis retineantur obstaculo: alioquin eos infames haberi decernimus. qui uero de Antiochena obsidione fide pusillamini et ambigua recesserunt, in excommunicatione permaneant, nisi se redituros certis securitatibus confirmauerint."

⁶ Hugh of Flavigny, *Chronicon*, lib. 2, s.a. 1100, in *Monumenta Germaniae Historica, Scriptores* 8: 487: "Anno ab incarnatione Domini 1100 apud Ansam conuenerunt archiepiscopi Lugdunensis, Cantuariensis, Tournonensis, Bituricensis, et episcopi numero novem... et pace statuta, de via Hierosolimitana loquuti sunt, eos qui voverant, et voti exequutores non fuerant, a communione segregantes, quoadusque vota sua compleverunt."

⁷ Noth sums up his argument thus (*Heilige Krieg und heilige Kampf*, pp. 138-139): "1. Das zur Orientfahrt verpflichtende Kreuzfahrgelübde ist nicht, wie bisher angenommen, eine Einrichtung Urbans II. Die Bestrebungen, ein solches einzuführen, kamen vielmehr aus den Reihen der Kreuzfahrer. Während ihr Anliegen in Frankreich bereitwillige Aufnahme fand, begegnete man ihm von päpstlicher Seite — so scheint es — zunächst durchaus zurückhaltend. Erst durch Kalixt II. wurden die einstigen Forderungen der Kreuzfahrer, aber nun vor der Jerusalemfahrt gelöst, eindeutig erfüllt."

"2. Das energische Eintreten der ersten Kreuzfahrer für ein verpflichtendes Gelübde vermag uns Aufschluss über ihre Vorstellungen von Kreuzzug zu geben. Das Kreuzfahrgelübde entsprach einem Pilgergelübde und war wie dieses ein individueller Akt, der nur für den Einzelnen Bedeutung hatte. Somit galt die Orientfahrt den Kreuzfahrern nicht war — und vielleicht nicht

His theory is original and ingenious. It is also open to a number of serious objections. Perhaps the most fundamental criticism of Dr. Noth's thesis is that it fails to take adequate account of the evidence concerning the character and nature of the canon law concerning vows prior to the first crusade. If Dr. Noth had assumed that by the time of the first crusade there was a clearly-defined agreement in the canon law as to what a vow was and what obligations it entailed, then the case would be simple. Such an assumption is false, as has been shown elsewhere.⁸ The vow as a developed juristic institution played no part in the first crusade, for a refined canonistic theory of the vow did not exist in 1095; it came into being only after, and in part as a result of, the crusade itself.

But if one takes Dr. Noth's thesis to mean that the vow in the somewhat vague and general sense current in the late eleventh century played no part in the crusade at the time of Urban II and Paschal II — and this does appear to be his meaning — then some objections are in order.

It is true that the evidence for a crusade vow at the time of the Council of Clermont is scanty. However there is some evidence and it seriously undermines Dr. Noth's argument. For one thing, the narrative sources concerning the Council of Clermont point unmistakably to the existence of a crusade vow from the time of that Council onward. Admittedly, the statements of chroniclers should not be accepted blindly; but this does not mean that they need not be used at all. The accounts of a number of contemporary narrators writing independently cannot be ignored when they corroborate one another's statements. This is precisely what we have in the way of narrative evidence about the crusade vow at the Council of Clermont. Four of the witnesses of the events at Clermont — Fulcher of Chartres, Baldric of Dol, Robert the Monk, and Guibert of Nogent — agree that Pope Urban II spoke of a crusade or pilgrimage vow in his sermon at Clermont.⁹ It is true that all of these writers set down their accounts some years after the event and, therefore, the possibility of anachronistic contamination cannot be excluded. It is also true that these

einmal in erster Linie — als ein militärisches Unternehmen mit dem Gesamtziel der Kirchenverteidigung oder -befreiung, sondern auch als eine Gelegenheit, die Vorteile geistlicher Art zu erlangen."

⁸ J.A. Brundage, *Medieval Canon Law and the Crusader* (Madison, 1969), pp. 36-37.

⁹ Fulcher of Chartres, *Historia Hierosolymitana* 1.4.4, ed. H. Hagenmeyer (Heidelberg, 1913), pp. 140-142; Robert the Monk, *Historia Iherosolimitana* 1.2 in *Recueil des historiens des croisades, Historiens Occidentaux* [hereafter: *RHC, Occ*] 3: 729-730; Baldric of Dol, *Historia de peregrinatione Jerosolimitana*, 1, in *RHC, Occ*. 4: 16; Guibert of Nogent, *Gesta Dei per Francos* 2.5, in *RHC, Occ*. 4: 140. See the analysis of these and other sources by D. C. Munro, "The Speech of Pope Urban II. at Clermont" *American Historical Review* 11 (1905-06) 231-242.

four chroniclers are the most reliable witnesses we have to the events at Clermont. Both Robert and Baldric claim to have been present at the council; Fulcher probably was there and Guibert may have been. When these four witnesses agree in their independent versions of the pope's remarks that the crusade vow was a subject which Urban mentioned, their testimony should be taken seriously. One or another of them certainly might have been guilty of reading into his account of the pope's address some mention of an idea about vows which had actually developed later. That four independent witnesses should have made the same error is extremely improbable. It is far more probable that Dr. Noth, by ignoring this evidence, has been led to a faulty conclusion.¹⁰

This probability is further strengthened if one examines critically the other testimony which Noth alleges in support of his views. The use of the term *votum* by Pope Urban II in his letter to the Flemings, for one thing, may have more significance than Dr. Noth is willing to concede. Although the use of the word *votum* to mean "wish" or "desire" is clear in some contexts, by far the commonest meaning of the word in eleventh-century documents is "vow". Dr. Noth's argument that the pope elsewhere used the terms *velle* and *desiderium* to refer to a proposal to enlist in the crusade is not really a convincing proof that when he used the word *votum* he meant the same thing as when he used the other two words. There is no reason to believe that Pope Urban II may not have wished on one occasion to speak of the crusade vow and on two other occasions to refer to the wish or desire to participate in the crusade.¹¹ The meanings are not necessarily identical. Furthermore, the argument that the pope used *votum* and *desiderium* in essentially the same sense can cut both ways. The term *desiderium* was, in fact, used somewhat later in the twelfth century to describe one stage in the canonistic analysis of the process of making a vow.¹² About all that can be concluded from the passage in the pope's letter to the Flemings is that Pope Urban may have used the word *votum* ambiguously. The more probable interpretation of his meaning, however, is that when he wrote *hoc votum* he meant "this vow".

In addition, Dr. Noth's thesis requires him to discount the evidence of two further letters. One is from the papal legate, Adhémar du Puy,

¹⁰ Noth cites this evidence in *Heilige Krieg*, p. 125 n. 191, but says nothing further about it.

¹¹ The relevant passages are: (1) *votum*: letter of Pope Urban II to the Flemings, *HEp*, p. 137, "si quibus autem uestrum Deus hoc uotum inspirauerit..." (2) *velle*: letter of Pope Urban II to a monk of Vallombrosa, in W. Wiederhold, ed., *Papsturkunden in Florenz* (Göttingen, 1902), p. 313, "Audiuimus quosdam uestrum cum militibus, qui Ierusalem liberande christianitatis gratia tendunt uelle proficisci..." (3) *desiderium*: letter of Pope Urban II to the Bolognese, *HEp*, p. 137, "nonnullos uestros in Hierusalem eundi desiderium concepisse audiuius..."

¹² Brundage, *Medieval Canon Law and the Crusader*, pp. 50-51.

and the Patriarch Symeon II of Jerusalem; it can be dated to 1097. The other letter is from the patriarch Symeon and other Eastern bishops, dated in January 1098.¹³ Both are directed to the bishops of the West and both were apparently designed for general circulation. Dr. Noth disposes of the inconvenient testimony of these two letters by declaring them forgeries. He asserts that it is inherently improbable that the Patriarch of Jerusalem and the Eastern Bishops, with or without the collaboration of a papal legate, would have had the temerity to address a letter to the bishops of the West. Such proof as this is not, perhaps, entirely convincing. But, Dr. Noth adds, we have a statement by Albert of Aachen to the effect that the Patriarch of Jerusalem fled to Cyprus at the time of the arrival of the crusading army before Antioch and that he joined the crusading army when it was engaged in the siege of Jerusalem. Therefore, he concludes, the Patriarch could not have joined in writing a letter which is dated at the crusaders' camp near Antioch. Aside from the fact that this tale is derived solely from the account of Albert, who was at home in Aachen while all of this was happening, it is at least conceivable that the patriarch may have had contacts with the crusaders other than those reported by Albert; certainly the journey from Cyprus to Antioch was not so difficult as to preclude the possibility of such a contact. Dr. Noth's argument *e silentio* that no such contact is mentioned by the other chroniclers is weak and is not sufficient to overcome the presumption in favor of the authenticity of the letter which is created by the other internal evidence in the documents. Moreover Dr. Noth questions the provenance of the first of these letters. The place of origin is indicated by the phrase *ubi nos sumus in Romania*. Noth interprets this to mean that it was written while the crusading army was still in Asia Minor. A little consideration of the usage of *Romania* at this period casts doubt on the force of this argument, too. *Romania* could be used at this time to designate not only Asia Minor, but more generally the areas ruled by the *Basileus*, in other words the whole of the Byzantine Empire. Since the crusaders considered Antioch to be rightfully a part of the Byzantine Empire — as the difficulties which arose after the capture of Antioch made amply plain — this argument, too, seems less than conclusive.¹⁴

The greater probability is that these two letters are, in fact, genuine.¹⁵

¹³ *HEp*, pp. 141-142, 146-149.

¹⁴ Cf. the study of the term *Romania* in medieval usage by Robert Lee Wolff in *Speculum* 23 (1948) 1-34.

¹⁵ The MS. evidence for both of them goes back to the beginning of the twelfth century. The first of the letters survives in a single MS.; the second was much better known, apparently, and more than thirty MSS. are listed in *HEp*, where the question of their authenticity is treated at length.

If so, the references in them to the crusade vow and to the penalties to be inflicted upon those who violated the obligations arising from that vow are gravely damaging to Dr. Noth's case.¹⁶ As for his negative judgment on the genuineness of the letters, based upon the alleged improbability of Eastern bishops communicating with Western churchmen, there is an alternate explanation which is at least as likely as the one proposed by Noth. If one of the major goals of the crusade was to establish easier and more friendly relations between the Roman Church and the Churches of the East, then it may be thought that these two letters constitute evidence that the papal legate with the first crusade, Adhémar du Puy, had scored a significant success in this phase of his mission. These letters show that he had secured the help and cooperation of the Patriarch of Jerusalem and the other Eastern bishops in calling for the strict enforcement of the votive obligations of those who had taken the cross.¹⁷

Dr. Noth also advances some further arguments based upon other letters from the crusading army in Syria which, he believes, can be interpreted in a sense favorable to his thesis. He refers to a letter of Bishop Anselm of Ribemont to Archbishop Manasses of Reims¹⁸ and another letter of the crusading princes to Pope Urban II.¹⁹ Both called for ecclesiastical censures against those who had taken the cross but had failed to set out for Jerusalem. Noth contends that these letters furnish positive proof for his theory. If there were indeed a crusade vow prior to this time, he contends, there would have been no need to ask for the imposition of penalties upon those who had failed to fulfill their vows. But since such penalties are called for, Dr. Noth thinks that it must follow that no votive obligations had previously existed. Thus, the letters calling for the imposition of penalties upon those who had broken the terms of their vows are said to prove that the vows had only just recently been made. What makes the argument even less compelling is

¹⁶ Thus in the earlier letter, the patriarch and Adhémar du Puy jointly declared: "uos igitur, quia bene scitis, quod uere sint excommunicati, quicumque fuerint sancta cruce signati et remanserint apostatae facti, per eandem crucem sanctam et sepulcrum Domini monemus, obsecramus, quatinus eos omnes anathematis gladio percutiatis nisi nos sequantur et festinent, ut, ibi nos sumus in Romania, sint et illi in futurum et proximum Pascha." (*HEp*, p. 142) The second letter was even more emphatic on this point: "maxime uero hi, qui uota fecerunt, nisi ueniant et uota persoluant, ego apostolicus patriarcha et episcopi omnisque ordo orthodoxorum excommunicamus et omnino eos a communione ecclesiae remouemus. Et uos idem facite, quod nec sepulturam inter Christianos habeant, nisi competenti causa remaneant." (*HEp*, pp. 148-149).

¹⁷ I have developed this argument in greater detail in "Adhémar of Puy: The Bishop and His Critics" *Speculum* 34 (1959) 289-310; see also Daniel Stiennon, "Rome et les églises orientales", *Euentes docete* 15 (1962) 319-385.

¹⁸ *HEp*, pp. 156-160; this letter can be dated to July 1098.

¹⁹ *HEp*, pp. 161-165, dated 11 September 1098.

the inchoate status of the canonistic theory about votive obligations at this period. To be sure the most eminent canonist of the late eleventh century, Bishop Ivo of Chartres, recognized that a vow creates an obligation and that the person who broke a vow should be punished, but he specifies no particular punishment, except public penance for the transgressor.²⁰ What the letters of Bishop Manasses and the crusading princes are asking for is the imposition of a rather more definite and stricter form of punishment for this offence. This is not the same thing as creating a new votive obligation.

Dr. Noth's thesis also involves the notion that the crusading forces themselves first began to construe the obligation to complete the crusade as a votive obligation after the capture of Antioch in 1098. His reconstruction of events seems unlikely in the extreme. If we accept Noth's interpretation, then we must postulate that the crusaders entered upon their crusade by taking the cross, which meant nothing more than affixing the cloth symbol of a cross to their garments. In the beginning, according to Noth, this act had no special juridical or moral result. It was a purely symbolic act, indicating that the wearer of the cross had made a decision to undertake the journey to Jerusalem. Then, after an exhausting march through Constantinople and Asia Minor and after surviving the hardships and perils of their long-drawn-out siege of Antioch, the remaining crusaders were shocked by a number of major desertions from their ranks. At this point, Noth supposes, the leaders of the expedition sought to secure papal recognition of the proposition that those who had taken the cross had by that act constructively assumed a votive obligation and, as a result, the leaders sought guarantees from the pope that sanctions would be imposed upon those who defaulted on this obligation. This reconstruction is not intrinsically impossible. It involves no necessary physical or logical impossibilities. But it does involve something very close to a moral impossibility. To accept it, we must believe that the crusading princes and their followers agreed to seek a *post factum* declaration that they themselves, as well as the deserting crusaders, had assumed a grave votive obligation several years previously. It is on the whole quite unlikely that the crusading princes — especially such men as Bohemund and Tancred, — would readily have consented to such an arrangement. It is equally improbable that they could have persuaded any great number of their followers to assent to this sort of proceeding. In the face of the extreme improbability that the crusading princes and their armies would have entertained any such far-fetched

²⁰ Ivo of Chartres, *Decretum* 7.19 (J. P. Migne, *Patrologia cursus completus... series Latina* [hereafter: *PL*] 161: 549) = *Panormia* 3.183 (*PL* 161: 1173) = *Decretum Gratiani* C. 20 q. 3 c. 1. See also *Medieval Canon Law and the Crusader*, pp. 33-34, 36-39.

proposal, Dr. Noth fails to adduce one iota of convincing proof to support his contention that they did so.

Dr. Noth's thesis is ingenious, but feebly supported by the evidence. It is altogether more probable that the votive obligations of the crusaders existed from the beginning of the crusade, that is, from the time of the Council of Clermont. Not only is this view supported by the consensus of the contemporary narrative writers, but it is also indicated by the most likely interpretation of Pope Urban's letter to the Flemings, by the letters of the Patriarch of Jerusalem, the papal legate, the Eastern bishops, the crusading princes, and the correspondence of Bishop Anselm of Ribemont.

As for the arguments which Dr. Noth bases upon the letter of Pope Paschal II to the French hierarchy,²¹ these are also questionable. The fact that some crusaders might be excused because of their poverty from their votive obligations to participate in the crusade is not exactly a clinching argument to show that no votive obligations existed. The exception which is specified in Pope Paschal's letter can most easily and naturally be interpreted as a dispensation from the crusading obligation, rather than a declaration that there was no such obligation. The surprising thing about this document is the fact that it does not specify any means of commuting or redeeming the obligation, but rather dispenses from it outright. Again, however, one must bear in mind that canonistic doctrines of dispensation at the time of the first crusade were still in their formative stage and were far from uniform at this period.²² Any explanation of the distinction made in Pope Paschal's letter between the sanctions against laggard crusaders and those against renegade crusaders must be more tentative. One possible explanation of that distinction might be that the laggard crusader was considered to be bound in a less serious way than the renegade crusader by the obligation to fulfill a crusade vow. We might, in other words, see here a fore-shadowing of the distinction between a *propositum* and a full-fledged *votum*, such as appears in later canonistic thought.²³ It is even more likely, however, that no real distinction between the two groups was intended. The pope, after all, directed that laggard crusaders — those who had vowed to go on crusade (*eos praesertim, qui huius militiae voto crucis signa sumpserunt*) but who had not yet done what they had vowed — were to depart for the Holy Land forthwith under pain of *infamia*. The term *infamia* in this context could quite properly be construed in a general sense to indicate that

²¹ *HEp*, pp. 174-175.

²² On the development of the doctrine of dispensation from vows at this period, see *Medieval Canon Law and the Crusader*, pp. 35-36, 42-43.

²³ For this distinction, see *Medieval Canon Law and the Crusader*, pp. 40, 50-53, 59-61.

they were to be treated as outcasts, as excommunicates, or even as outlaws.²⁴ The Synod of Anse, if this interpretation is accepted, can be said simply to have specified more precisely than had the pope the appropriate penalties to be inflicted on laggard crusaders. As for the pope's statement that renegade crusaders were to remain excommunicated, this would seem to mean that they had already done something which warranted excommunication, i.e. they had broken their vows. This scarcely supports Dr. Noth's thesis.

All in all, Dr. Noth fails to make a convincing case for his thesis concerning the origin of the crusader's vows on the first crusade. His arguments are contradicted by the majority of the surviving documents. He attempts to support his position by attacking the credibility of some of the documents, ignoring the testimony of others, and torturing the interpretation of the rest to fit his thesis. Certainly the argument is original, but the evidence to support it has not yet been found.

²⁴ The term is sometimes used in this sense in the *Decretum Gratiani*, e.g. C. 6 q. 1 c. 3; cf. Ivo of Chartres, *Panormia* 5.1.1 (PL 161: 1211). For the later development of *infamia* see Peter Landau, *Die Entstehung des kanonischen Infamiebegriffs von Gratian bis zur Glossa Ordinaria* (Köln, 1966; *Forschungen zur kirchlichen Rechtsgeschichte und zum Kirchenrecht*, v. 5).

VI

THE VOTIVE OBLIGATIONS OF CRUSADERS

THE DEVELOPMENT OF A CANONISTIC DOCTRINE*

The Crusade vow has long been recognized as an important, indeed a central feature in the history of the whole Crusade movement, for, as Michel Villey pointed out, it was the vow which enabled the papacy to convert the momentary zeal of would-be Crusaders into a permanent obligation which could be enforced, if need be, by legal compulsion.¹ Thus while the volatile enthusiasm of a crowd fired by a Crusade preacher might quickly evaporate, the mechanism of the vow made it possible for the Church to convert this enthusiasm into a binding and enduring commitment which did not disappear easily, quickly, or cheaply. The vow, then, was a juristic mechanism which was a major factor in the success of the Crusade and the perception of its potential usefulness was one of Pope Urban II's most significant innovations in framing his plans for the first Crusade in 1095.

The idea of the vow itself was, of course, scarcely a novelty in 1095. Some sort of system of vows (taken in the general sense of a promise or commitment made to a deity) seems to be found in virtually every kind of religious system. Certainly the Old Testament abounds in references to vows and one whole chapter of Leviticus is devoted to an elaborate discussion of the legal obligations arising from them and the means of satisfying these obligations.² The Fathers of the Church, too, spoke on occasion of vows, though generally not in a specifically juridical sense of the term.³ And certainly no priest or monk, even if not a profound student of the Mosaic law or the Fathers, could have been unaware of the notion that some sort of obligation arose from vows.⁴

* It is a pleasant duty to record my thanks to the John Simon Guggenheim Memorial Foundation and the Graduate School of the University of Wisconsin for the generous grants which made possible much of the research underlying this paper. Substantial portions of this paper also were delivered at the Third Biennial Conference on Medieval Studies at Western Michigan University.

¹ Michel Villey, *La Croisade: Essai sur la formation d'une théorie juridique* (L'Église et l'état au moyen âge 6; Paris 1942) 119-120; see also his more recent paper, 'L'idée de la croisade chez les juristes du moyen âge,' *Relazioni del X Congresso internazionale de Scienze storiche* (6 vols. Roma 1955) 3.581-582.

² Leviticus 27.

³ Germaine Catherine Capelle, *Le vœu d'obéissance dès origines au XII^e siècle* (Bibliothèque d'histoire du droit et droit romain 2; Paris 1959) 5-32 discusses the usage of the term vow and related terms in antiquity and the Fathers.

⁴ Monastic vows, though long in use, are not a feature of early monastic usage. Thus, Reprinted by permission of the Board of Editors of *Traditio* and of Fordham University Press.

All of this notwithstanding, there does not appear to have been prior to 1095 any well-defined doctrine of the vow and its resultant obligations in the Western Church. The most important of the late-eleventh-century canonistic writers, Bishop Ivo of Chartres (c. 1040-1115), who was compiling his major canonistic collections precisely at the time when Urban II proclaimed the first Crusade,⁵ reflects in his work the inchoate state of canonical doctrine at this period. Essentially, Ivo makes five points about the vow: namely, that what is vowed must be done or otherwise punishment will follow⁶; that actions which were lawful before taking a vow may become unlawful afterwards if they tend to vitiate the vow⁷; that foolish vows should not be kept and are not binding⁸; that a monk may not undertake a vow without the permission of his abbot,⁹ and that a married person may not lawfully make a vow without the consent of his spouse.¹⁰ However basic these concepts may have been, they are far from constituting a coherent juridical theory of the vow. It is only in the mid-twelfth century — thus nearly half a century after the commencement of the Crusade movement — that a more comprehensive theory of the vow in general and of the Crusade vow in particular begins to develop in the canonistic literature.¹¹

St. Benedict nowhere in his *Rule* uses the term 'vow'. Chapter 58, which deals with the profession of monks, consistently uses the verb *promittere* to describe the act by which a monk binds himself to the observance of the *Rule* and its precepts; the same verb is used in describing the dedication of an oblate (c. 59) and the reception of a priest in the community (c. 60). A promise of chastity was required of candidates for ordination to the subdiaconate and higher orders from the sixth century onwards: L. Hertling, 'Die Professio der Kleriker und die Entstehung der drei Gelübde,' *Zeitschrift für katholische Theologie* 56 (1932) 148-174. As for monastic vows, they only appear in the strict, juridical sense of the term at the end of the eighth century; see Capelle, *Le vœu d'obéissance* 239.

⁵ Ivo's three canonistic collections — the *Decretum*, the *Panormia*, and the *Tripartita* — date from the years 1094-1096. See Paul Fournier and Gabriel Le Bras, *Histoire des collections canoniques en occident depuis les fausses décrétales jusqu'au Décret de Gratien* (2 vols. Paris 1931-1932) 2.55-57; Capelle, *Le vœu d'obéissance* 210-211; and Rolf Sprandel, *Ivo von Chartres und seine Stellung in der Kirchengeschichte* (Pariser historische Studien; Stuttgart 1960) for a recent general account of Ivo's career.

⁶ Ivo, *Decretum* 7.19 (PL 161.549 = *Panormia* 3.183 in PL 161.1173 = C. 20 q. 3 c. 1), 7.20 (PL 161.549 = C. 20 q. 1 c. 8), 7.146 (PL 161.580 = C. 27 q. 1 c. 16); 8.137 (PL 161.614); *Panormia* 3.192 (PL 161.1175-76 = D. 27 c. 5), 3.199 (PL 161.1177 = C. 27 q. 5 c. 34).

⁷ Ivo, *Decretum* 8.73 (PL 161.599 = C. 32 q. 8 c. un.); *Panormia* 3.200 (PL 161.1177 = C. 27 q. 1 c. 33).

⁸ Ivo, *Decretum* 12.64 (PL 161.796 = C.22 q.4 c.14).

⁹ Ivo, *Decretum* 7.32 (PL 161.553 = C.20 q.4 c.2).

¹⁰ Ivo, *Decretum* 8.136 (PL 161.614 = C.33 q.5 c.4).

¹¹ One of the accounts of Pope Urban's speech at Clermont uses a technical term of the Roman law concerning vows to describe the taking of the Crusade vow. Robert the Monk, *Historia Iherosolimitana* 1.2 (RHC, Occ. 3.729), reporting the pope's address, speaks of the vow as a *sponsio Deo*. In Roman legal terminology the *sponsio voti* denoted a promise or

The canon law may be said to have come of age with the appearance c. 1140 of the *Concordia discordantium canonum* (more commonly known as the *Decretum*) of the Bolognese monk, Gratian.¹² Somewhat surprisingly, Gratian nowhere deals in the *Decretum* with the precise problems posed by the canonical status of Crusaders. He does, however, treat in several different contexts some of the fundamental problems and doctrines involved in the theory of the vow. He states quite explicitly, for one thing, the fundamental notion that the making of a vow creates an obligation to fulfill the deed vowed and that this obligation is an enforceable one, although the sanctions for its enforcement are not particularized (C.17 q.1 c.1). From this point, he goes on to attempt an analysis of the process of taking a vow — on this matter he teaches essentially that a vow becomes binding when it is decided upon mentally (*deliberatio*), even if it is not pronounced orally (C.17 q.1 c.4). He would distinguish further, however, between the act of envisioning a proposal (*concipere*) and the actual assumption of a votive obligation (C.17 q.1 d.p.c. 4). Some positive action, in other words, is required in order to create a fully effective vow with its ensuing system of enforceable obligations.¹³ Once a vow has been made, can the resulting obligations be dispensed from or modified? This is a question which Gratian does not deal with explicitly, although he does elaborate a general doctrine of dispensation from ecclesiastical law. It is clear from his *dicta* and from the canons which he quotes in support of his views, that dispensations from the law are frequently required and must be granted on occasion in order to adjust the law to changes in the times and to the various conditions of men.¹⁴ There are, however, limits beyond which the dispensing power may not go. Although a dispensation may be granted from other laws, Gratian holds that no one may dispense from the precepts of the Gospel or from the requirements of the natural law, although even here

oath pronounced during the ceremonial libations which created a solemn and irrevocable obligation to the deity to whom it was addressed. On the Roman doctrine of the *sponsio voti*, see Juliette Turlan, 'L'obligation "ex voto,"' *Revue historique de droit français et étranger*⁴ 33 (1955) 515-520.

¹² Although very little is actually known about Gratian himself, the literature concerning his work is enormous. Perhaps the best short appreciation of the character of his work is Stephan Kuttner's *Harmony from Dissonance: An Interpretation of Medieval Canon Law* (Wimmer Lectures 10; Latrobe, Pa. 1960). The date 1140, usually accepted for the appearance of the *Decretum*, has been vigorously questioned by A. Vetulani, 'Le Décret de Gratien et les premiers décrétistes à la lumière d'une source nouvelle,' *Studia Gratiana* 7 (1959) 273-354. Vetulani argues that the composition of the *Decretum* should be ascribed to the period of the pontificate of Paschal II (1099-1118). The traditional date is convincingly defended, however, by Gérard Fransen, 'La date du Décret de Gratien,' *Revue d'histoire ecclésiastique* 51 (1956) 521-531.

¹³ C. 17 q.2 c.1-2 and d.p.c.2.

¹⁴ C. 1 q.7 c.6, 15-17, 23 and d.p.c.6.

some latitude is conceded where it is necessary to choose the lesser of two evils.¹⁵ Gratian apparently found it unnecessary to distinguish explicitly between dispensation, by which a vow or other legal obligation was entirely absolved without the imposition of any further obligation, and redemption or commutation, by which another obligation is substituted in place of the one originally assumed.¹⁶

Elsewhere in the *Decretum*, Gratian deals with some of the special problems posed by vows made by those who were subject to the authority of another person, such as minors, monks, and married persons. Essentially, Gratian's teaching holds that vows and other commitments generally are not binding when made by minors without consent of their parents or guardians¹⁷; and that such vows or other commitments may be revoked by the parent or guardian if timely action is taken.¹⁸ On the other hand, minors may be held bound by commitments (implicitly including religious vows) made for them by their parents.¹⁹ His position on these matters is generally in accord with the principles of the Roman law.²⁰ Likewise, monks are forbidden to make vows without the consent of their abbot; should they do otherwise the vow is to be broken.²¹ The rationale behind this position, Gratian explains, is that it will prevent monks from taking pilgrimage vows in order to escape the regular discipline of their order.²² As for the vows of married persons, Gratian discusses these specifically in connection with the vow of chastity. The principal points of his teaching here may be reduced to these: (1) neither party to a marriage may licitly make a vow without the consent of the other²³; (2) a vow made by one party without the other's consent is not binding and may, at the insistence of the other party, be broken²⁴; (3) a vow made with the

¹⁵ D. 13 d.a.c.1; also D. 14, especially c. 2.

¹⁶ A well-developed system of commutation had long since appeared in the Church's penitential system and the redemption of vows was, of course, a feature of the Mosaic law: see Leviticus 27, where the matter is treated at length. On the notion of commutation in early medieval contractual law, see J. Balon, *Ius medii aevi* (Namur, 1959-; in progress) 1/2.398. Commutation of penance is discussed in detail by Cyrille Vogel, 'Composition légale et commutation dans le système de la pénitence tarifée,' *Revue de droit canonique* 8 (1958) 289-318 and 9 (1959) 1-38, 341-359. See also J. Creusen, 'Commutation de vœu,' DDC 3.1184-1186, and J. Brys, *De dispensatione in iure canonico praesertim apud decretistas et decretalistas* (Universitas Lovaniensis: Dissertationes ad gradum doctoris in facultate theologica consequendum conscriptae² 14; Bruges 1925).

¹⁷ C. 20 q.2 c.1-2; C. 22 q.5 c.14-16.

¹⁸ C.22 q.5 c. 15.

¹⁹ C.22 q.2 d.p.c.2.

²⁰ *Dig.* 50.12.2.1; cf. Turlan, 'L'obligation "ex voto"' 529-530.

²¹ C.2 q.4 c.2 and d.p.c. 3.

²² C.20 q.4 d.p.c.3.

²³ C.33 q.5 c.1 and especially d.p. c. 11.

²⁴ C.33 q.5 c.2-3, 5-6, and d.p.c.11.

consent of the other party is binding and must be kept²⁵; (4) once a vow of chastity has been made by one party with the consent of the other, it remains binding on both, even if the consenting party should subsequently withdraw consent,²⁶ and finally (5) other vows (specifically named are vows to enter the religious life or vows of abstinence) made by a wife with her husband's consent may be revoked should the husband subsequently withdraw his consent.²⁷

There thus emerges in Gratian's *Decretum* a reasonably coherent doctrine of the vow *in genere*, although there is still no consideration of the special problems posed by the Crusade vow in particular. Yet, Gratian's treatment of the vow left a number of important problems still open or, at least, not clearly resolved. The notion of what exactly constitutes a vow, for example, is nowhere clearly set forth in the *Decretum*, nor is the analysis of the process by which votive obligations are created very satisfying. Likewise there is lacking any rigorous distinction between different types of vows. Again, the process of dispensation and the related processes of redemption and commutation of vows, although hinted at in some of Gratian's canons and *dicta*, are not clearly defined and disposed of. These were all problems in the theory of the vow which remained to be dealt with by subsequent legislation and clarified in the commentaries and glosses of the decretists and decretalists.

In one of the earliest and most important commentaries to the *Decretum*, the *Stroma* (written before 1148),²⁸ Rolandus Bandinelli (the later Pope Alexander III, 1159-1181) adds some important nuances to Gratian's theory of vows. First, Rolandus draws a distinction between two species of vows, which he calls respectively private and solemn. The private vow is one which is mentally determined upon and which may even be pronounced aloud without formalities (*simpliciter*). A private vow, Rolandus holds, may be binding in the eyes of God, but it creates no obligation so far as the Church is concerned. To put it in other words, Rolandus is here distinguishing between the binding power of a vow *in foro interno* and *in foro externo*.²⁹ A simple vow

²⁵ C.33 q.5 c.4 and d.p.c.11.

²⁶ C.33 q.5 d.p.c. 20.

²⁷ C.33 q.5 d.p.c.20. The directly related notion of the *sacramentum in voto* is examined by A. Landgraf, 'Das sacramentum in voto in der Frühscholastik,' *Mélanges Mandonnet* (Paris 1930) 2.97-143.

²⁸ See J. F. von Schulte, *Die Geschichte der Quellen und Literatur des canonischen Rechts von Gratian bis auf die Gegenwart* (3 vols; Stuttgart 1875-1880; repr. Graz 1956) 1.114-118; Stephan Kuttner, *Repertorium der Kanonistik* (Studi e testi 71; Città del Vaticano 1937) 127-129; and especially Marcel Pacaut, *Alexandre III: Étude sur la conception du pouvoir pontifical dans sa pensée et dans son oeuvre* (L'église et l'état au moyen âge 11; Paris 1956).

²⁹ This terminology, though late, is useful. The thirteenth-century terms were *ius fori* (= *forum externum*) and *ius poli* (= *forum internum*); see Stephan Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX.* (Studi e testi 64; Città del Vaticani-

is binding only in conscience.³⁰ Rolandus does not attempt to define the formalities which make a vow solemn, but he holds apparently that a solemn vow would be binding both *in foro interno* and *in foro externo*.³¹

The analysis is somewhat further advanced by another important decretist, Rufinus, whose *Summa* was written about a decade later than the *Stroma* of Rolandus.³² While he accepts Rolandus' distinction between the binding power of a vow in God's eyes and its binding powers in the eyes of the Church, Rufinus lays the emphasis in his treatment upon the element of *deliberatio*. Vows made in haste, without *deliberatio*, are not binding so far as the Church is concerned, but they may still be binding in conscience *quantum ad Deum*. It is *deliberatio*, then, which distinguishes for Rufinus the effectiveness of a votive obligation in the *forum externum*.³³ As for the types of vows, Rufinus follows the theologian Peter Lombard³⁴ in distinguishing two fundamental species: the general vow, which is binding on everyone, and the special vow, which is binding only upon those who undertake it voluntarily. The special vow may be either simple or solemn in form. A simple vow is one made either in public or in private, but in either case it is made without a solemn obligation attached. A solemn vow, on the other hand, must be accompanied by some sacred ceremony and must be witnessed by at least two or three persons.³⁵ The topic of dispensation from ecclesiastical law is dealt with at some length by Rufinus, but he does not treat of dispensations from vows for the very good reason that he holds that they may not be dispensed from at all, a position which he grounds on an alleged requirement of the natural law.³⁶

no 1935) 324-325; R. Naz, 'For,' DDC 5.871-873; P. M. Quantin, 'A propos des premières Summae confessorum, *Recherches de théologie ancienne et médiévale* 26 (1959) 305. For a clear, concise statement of the distinction between the two *fora*, see A. Ottaviani, *Institutiones iuris publici ecclesiastici* (4th ed. 2 vols. Città del Vaticano 1958-1960) 1.189. A more extensive analysis is that of P. Capobianco, 'De ambitu fori interni in iure ante Codicem,' *Apollinaris* 8 (1935) 591-605 and 'De notione fori interni in iure canonico,' *Apollinaris* 9 (1936) 364-374.

³⁰ *Die Summa magistri Rolandi, nachmals Papstes Alexander III.* ed. by Friedrich Thanner (Innsbruck 1874) to C. 17 q.1 p. 58.

³¹ Rolandus, *Summa* to C.17 q.1 (Thanner 58) and to C.12 q.1 (Thanner 26).

³² On the date of Rufinus' *Summa*, see the introduction by H. Singer to his edition, *Die Summa Magistri Rufini zum Decretum Gratiani* (Paderborn 1902; repr. Aalen 1963), cxv-cxviii. On Rufinus, see also Kuttner, *Repertorium* 131-132; Schulte, *Geschichte der Quellen* 1.121-130; Robert Benson, 'Rufin,' DDC 7.779-784.

³³ Rufinus, *Summa* to C.17 q.1, v. 'Quod a voto discedere non liceat' (ed. Singer p. 372).

³⁴ The *Sententiae* of Peter Lombard, published in 1151/1152, was (after the Bible) the most essential textbook of medieval theologians. The Lombard discusses vows in connection with his treatment of the sacrament of marriage: *Sententiae* 4.38.1-2 (PL 192. 932).

³⁵ Rufinus, *Summa* to C.27 q.1, v. *Quod vero voventes* (Singer p. 435).

³⁶ Rufinus, *Summa* to C.1 q.7 d.a.c.6 (Singer p. 234).

A new element in the canon law of the vow is introduced by the *Summa Parisiensis*, written perhaps c. 1160.³⁷ What Rolandus called a solemn vow becomes a public vow in the *Summa Parisiensis*, while the private vow remains a private vow. The important difference between the analysis of Rolandus and that of the *Summa Parisiensis* is reflected by this difference in terminology, for in the *Summa Parisiensis* it is precisely the element of publicity which distinguishes the two sorts of vows from one another. For the author of the *Summa Parisiensis* it is the publication of a vow which brings it into the *forum externum* and subjects the author of the vow to public sanctions should he fail to adhere to its terms.³⁸

A more complicated analysis of the types of vows is expressed by another decretist writing in the 1160s. Stephen of Tournai in his *Summa*³⁹ speaks of three types of vow: the solemn vow, the private vow, and the tacit vow (*votum adnexum*). A solemn vow he describes as a vow taken publicly at the hands of a bishop, abbot, or priest in a ceremony which is sometimes marked by the imposition of a cross (possibly a reference to a Crusade vow) or a sacred relic. A private vow is one made either silently or at least without any formal ceremony. A tacit vow is one which is not expressed, but which is implied by another action — such as taking holy orders or the investiture with the monastic habit.⁴⁰

In the next decade, Joannes Faventinus, writing c. 1171,⁴¹ carries the analysis of the stages by which a vow becomes binding one step further. In Joannes' scheme of things, there are three stages in taking a vow: one begins with *deliberatio* or a *propositum*, proceeds to a *desiderium*, and ends with a full-blown *votum*. Accordingly, the inception of a vow commences with *deliberatio*, a thinking over of a proposed course of action. The second stage is one in which the notion is turned over in the mind, considered at some length, and may even be mentioned aloud. At this stage the project is termed a *desiderium*. In the third and final stage, a definite promise is made to pursue

³⁷ On the *Summa Parisiensis*, see the introduction by Terence P. McLaughlin to his edition, *The Summa Parisiensis to the Decretum Gratiani* (Toronto, 1952), vii-xxxiii.

³⁸ *Summa Parisiensis* to C.17 q.1 (McLaughlin p. 188).

³⁹ See Schulte, *Geschichte der Quellen* 1.133-136 and also the introduction to his partial edition of Stephen's *Summa* (Giessen 1891; repr. Aalen 1965); Kuttner, *Repertorium* 133-136; and his 'Les débuts de l'école canoniste française' *Studia et documenta historiae et iuris* 4 (1938) 144-195; G. Lepointe, 'Étienne de Tournai,' DDC 5.487-492. The date of Stephen's *Summa* cannot be fixed with great certainty. It was finished prior to 1171, as Joannes Faventinus made use of it, and it is certainly later than the work of Paucapalea, Rufinus, and Rolandus, all of whom Stephen quotes.

⁴⁰ Stephen of Tournai, *Summa* to C. 27 q.1 pr. (Schulte p. 233).

⁴¹ On Joannes Faventinus see Schulte, *Geschichte der Quellen* 1.137-140; Kuttner, *Repertorium* 143-146; Giovanni Argenti, 'Ioannes Faventinus glossator,' *Apollinaris* 9 (1936) 418-443, 640-658; A. M. Stickler, 'Jean de Faenza,' DDC 6.99-102.

the course intended: this is the vow properly speaking. According to Joannes, there is no sin involved in setting aside a *deliberatio*; rejecting a *desiderium* he would consider only slightly sinful; but to set aside a vow is mortally sinful, although there is no mention of the penalties which might follow in the *forum externum*.⁴²

A somewhat different view is expressed in the *Summa* of Sicardus of Cremona, written between 1178 and 1181.⁴³ While Sicardus adopts the tripartite scheme (*propositum* — *desiderium* — *votum*) of Joannes Faventinus,⁴⁴ he goes on to distinguish between simple and solemn vows and to specify four means whereby vows may be solemnized: by writing, by witnesses (although this, he adds, may properly be said only to publicize, not to solemnize a vow), by actual entrance into a monastery (true only for religious vows) or formal profession to a religious superior (again applicable only to vows of religion), and by the use of the appropriate habit or garb.⁴⁵ For Sicardus, then, the publication of a vow is not directly related to its binding power: he explicitly distinguishes between publication and solemnization. What is essential in his view is the intention and degree of determination of the person taking the vow, not the publicity of the act. However, since Sicardus does not invoke (as Rolandus and Rufinus did) a distinction between the binding power of a vow *quantum ad ecclesiam* and *quantum ad Deum*, we are left in the dark as to his teaching on the enforceability of vows *in foro externo*.

The greatest of the twelfth-century decretists, Huguccio of Pisa, in his *Summa* (written c. 1188-1190)⁴⁶ sums up the doctrines of his predecessors

⁴² Joannes Faventinus, *Summa* to C.17 q.1 pr. in Bodleian Library, Oxford, MS Tanner 8, p. 494: 'Preterea distinguendum censemur inter deliberationem et uoluntatem et uotum. Incipit enim uotum in deliberatione; augmentatur in uoluntatis delectatione et pronuntiatione; perficitur in promissione: ex primo propositum, ex secundo desiderium [ms.: desiderii], ex tertio dicitur uotum. A primo recedere non est mortiferum, alioquin recedens in priori fide et caritate non remaneret, ut infra causa quarta dicitur. Nec a secundo recedere uidetur mortale peccatum. . . . A tertio tamen recedere mortale peccatum est. . . .'

⁴³ See M. Sarti and M. Fattorini, *De claris archigymnasii Bononiensis professoribus a saeculo XI usque ad saeculum XIV*, rev. ed. by C. Albicino and C. Malagola (2 vols. Bologna, 1888-1896; repr. Torino 1962) 1.357-359; Schulte, *Geschichte der Quellen* 1.143-145; Kuttner, *Repertorium* 150-153.

⁴⁴ Sicardus, *Summa* to C.17 q.1 (British Museum, MS Add. 18,367, fol. 45^{ra}): 'Nota quod votum mente concipitur: hoc est propositum; concepti voluntas editur: hoc est desiderium denique uerborum obligatione perficitur: hoc est proprium uotum. A proposito et desiderio recedere potes sine mortali peccato; a uoto nequaquam, siue sit simplex, siue solempne, si tamen ex sana mente processit.'

⁴⁵ Sicardus, *Summa* to C.20 q.3 (MS cit. fol. 46^{vb}): 'Nota quod sub plurium testimonio et cum scriptura facienda est professio [scil.: religionis]. Hec et enim solempnitatis sunt et solempne uotum faciunt.'

⁴⁶ Sarti-Fattorini, *De claris professoribus* 1.370-376; Schulte, *Geschichte der Quellen* 1.156-170; Kuttner, *Repertorium* 155-160.

on the matter of vows. The doctrine of Rolandus, Rufinus, and the *Summa Parisiensis* he finds unsatisfactory, for, he asks, how can an action such as breaking a private vow, which is sinful in God's eyes, be held licit by the Church, especially when it is a matter of a promise witnessed by the Church? Such a doctrine he rejects as a snare, which may deceive men's souls by giving them a false sense of security. Further, he is inclined to think that even a simple promise, without formalities, would be binding anyway.⁴⁷ Huguccio then summarizes, with apparent approval, the tripartite scheme of Joannes Faventinus and Sicardus. To reject a *deliberatio* he holds a very slight sin (*levissimum peccatum*); to reject a *propositum* is likewise sinful, but not mortally so; but to violate a vow which has been pronounced aloud, whether with or without solemnity, he considers mortally sinful, unless perchance the vow was made in the heat of passion.⁴⁸

By way of contrast, another interesting attempt to evaluate the guilt involved in breaking a vow occurs in an anonymous twelfth-century gloss to the *Decretum* in a manuscript now in the Parker Library of Corpus Christi College, Cambridge. The unknown writer of this gloss held that the sin involved in breaking any vow was more serious than the sin of adultery, at least if it were a question of a vow which was not obligatory.⁴⁹ This position in turn contrasts with that expressed c. 1186 by the author of the *Summa Lipsiensis*,⁵⁰

⁴⁷ Huguccio, *Summa* to C.17 q.1 pr. (Paris, Bibliothèque Nationale, MS lat. 3892, fol. 243^vb: 'Quod a uoto. Hic intitulatur prima questio, scilicet an liceat alicui discedere a uoto. In hac questione magister sic distinguit, scilicet quod aliud est uotum corde conceptum simpliciter ore pronunciare, aliud est subsequente obligatione se reum uel obnoxium facere. Quocumque horum modorum quis uotum faciat, non licet ei discedere a uoto quantum ad deum, alioquin reus erit; sed quantum ad ecclesiam licet ei discedere a priori uoto, non autem a secundo. Sed si peccatum est apud deum, qualiter erit licitum apud ecclesiam, presertim cum notum sit ecclesie? . . . Nonne hoc esset laqueum inicere talibus et decipere animas eorum falsa securitate, quod non est faciendum? . . . Sed numquid non tenetur quis de simplici promissione? Utique: non enim dominus uoluit differentiam esse inter communem loquelam et iuramentum....'

⁴⁸ Huguccio, *loc. cit.*: 'Alii faciunt distinctionem inter deliberationem et uoluntatem et uotum. Incipit enim uotum in deliberatione; augmentatur in uoluntate; perficitur in promissione. Et secundum hunc triplicem progressum triplex sortitur uocabulum. Primo enim dicitur deliberatio, cuius fractio est leuissimum peccatum, quia potest homo deliberata non facere et in prioribus bonis permanere, quod non esset si illa fractio esset mortale peccatum. . . . Tandem quod quis tepide deliberauerat firmiter se facturum in animo proponit, et dicitur propositum . . . , huius propositi uiolatio est ueniale peccatum, sed grauius quam primum peccatum. Idem quod in animo quis proposuerat ore promittit, uel sollempniter uel sine sollempnitate et dicitur uotum, a quo recedere est mortale peccatum, nisi pro passionis feruore promittatur . . . '

⁴⁹ Corpus Christi College, Cambridge, MS 10, fol. 271^rb, gloss to C.27 q.1 c.41: 'Grauius est labi a quolibet uoto quam adulterari; id est uotum quod non cogit^{<ur>} uouere; sed postquam uoueritis, reddere ^{<oportet>}.'

⁵⁰ See Kuttner, *Repertorium* 196-198.

who airily dismisses the notion that there is any grave sin involved either in not fulfilling a simple vow or in entertaining an adulterous desire. 'Who, indeed,' he asks rhetorically, 'will reproach the breaking of a simple vow or an adulterous inclination?'⁵¹

The notion of simple and solemn vows is put in a somewhat different light by an anonymous work of the late-twelfth-century English canonistic school, the *Summa De iure naturali*, preserved in a unique manuscript of Durham University. For the author of this *Summa*, writing between 1171 and 1179,⁵² the solemnity of a vow is defined by the character of the witnesses to it. In his view, a vow becomes solemn when it is professed publicly in the presence of a priest or bishop, while a simple vow, *e converso*, is one which is witnessed only by very few persons or by no one at all.⁵³ This position is clearly akin to that of the *Summa Parisiensis*, which takes publication of a vow to be the decisive factor in determining its solemnity and hence its binding power. *De iure naturali*, however, links the publication of a vow and its consequent solemnity more directly to the *magisterium* than does the *Summa Parisiensis*.

Another significant treatment of the doctrine of vows may be found in the *Glossa Palatina* (written between 1210 and 1215).⁵⁴ The *Glossa Palatina* describes the vow as the conception of a proposal for a better way of life, determined upon by mental deliberation, through which one places oneself under an obligation to God.⁵⁵ In his discussion of the genesis and types of vows, the author of the *Glossa Palatina* adopts the tripartite scheme of Joannes Faventinus and Huguccio, whom he paraphrases very closely. In contrast to the position of Huguccio, he also presents the views of a *magister B.*, who has been conclusively identified by Kuttner as Bernardus Compostellanus

⁵¹ *Summa Lipsiensis* to D.81 c.1, cited by Kuttner, *Kanonistische Schuldlehre* 19 n. 3: 'grave ideo dicit ad differentiam illius, quod tantum in voluntate consistit . . . : quis enim accusat fractionem simplici voti vel adulterium voluntatis?'

⁵² Pierre Legendre, 'Miscellanea Brittanica,' *Traditio* 15 (1959) 494, first called attention to this *Summa*, which has since been studied by Knut Nörr, 'Die Summen "De iure naturali" und "De multiplici iuris diuisione,"' *ZRG kan. Abt.* 79 (1962) 138-163.

⁵³ *De iure naturali* to C.17 q.1 (Durham University Library, MS Cosin V.III.3, fol. 64^{rb}): 'Votum [est] tamen corde conceptum sed ore non prolutum uel ore prolutum sed simpliciter, id est coram nullo uel paucis enunciatur, nullum apud ecclesiam <reum> constituit, licet apud deum. Si uero solemniter, id est coram facie ecclesie presente episcopo vel sacerdote fuerit pronunciatum, tam apud ecclesiam quam apud deum voventem reddit obligatum et transgredientem constituit reum.'

⁵⁴ See Kuttner, *Repertorium* 81-92. The authorship of Laurentius Hispanus has been persuasively argued by A. Stickler, 'Il decretista Laurentius Hispanus,' *Studia Gratiana* 9 (1966) 461-549.

⁵⁵ *Glossa Palatina* to C.27 q.1 c.1 (Vatican Library, MS Pal. lat. 658, fol. 76^{ra}): 'Est autem uotum prout hic accipitur: conceptio melioris propositi, animi deliberatione firmata, qua quis se deo obligat.'

antiquus.⁵⁶ The author of the *Glossa Palatina*, however, apparently misunderstood Huguccio's position, for he restates it incorrectly at one point.⁵⁷ The treatment of the simple vow in the *Glossa Palatina* is taken verbatim from the *Distinctiones decretorum* of Richardus Anglicus (written c. 1196).⁵⁸ Richardus, followed by the *Glossa Palatina*, takes the view (also reflected in the French gloss *Ecce vicit Leo*⁵⁹) that a vow properly speaking must be expressed as a promise of a present action, not as a promise of a future undertaking, which would not be binding.⁶⁰ This construction of the vow is based upon an analogy with the law of betrothal, in which a promise of future marriage might be rescinded, while a promise of marriage *de presenti* was held binding.⁶¹ According to this scheme of things, then, a vow is first conceived

⁵⁶ 'Bernardus Compostellanus antiquus: A Study in the Glossators of the Canon Law,' *Traditio* 1 (1943) 277-340. This article supersedes the older studies on Bernardus. His *apparatus* has recently been found in a MS at Gniezno, Cathedral Chapter 28: R. Weigand, 'Neue Mitteilungen aus Handschriften,' *Traditio* 21 (1965) 480, 482-4.

⁵⁷ Thus the *Glossa Palatina* to C.17 q.1 pr. (MS cit. fol. 60^{va}): 'Quod a uoto discedere. Hic intitulatur prima questio, an liceat alicui discedere a uoto. Quid autem sentiat de hac materia omnia habes infra eadem § his ita [d.p.c. 4] quia refert an uotum corde conceptum ore exprimat tantum, an sequenti obligatione se reum uoti faciet. In [secundo] casu utroque tenetur quoad deum . . . et peccat mortaliter contraueniendo. Sed quoad ecclesiam non tenetur in primo, sed tantum in secundo. . . . Sed si in primo peccatum est quoad deum, quomodo licitum erit quoad ecclesiam? Preterea cum notum sit ecclesie . . . nonne hoc est laqueum talibus inicere? . . . Immo non est differentia inter simplicem promissionem et iuramentum: b. uero dicit quod uotum quandoque dicitur deliberatio que uersatur in animo, cum scilicet secum quis reuoluit et fluctuat; si quis uenit contra hoc, non peccat. Quandoque dicitur propositum, cum alterum scilicet elegit et proponit, et ueniendo contra tale propositum secundum b. peccat uenialiter; secundum h. mortaliter, nam h. dicit tale propositum esse uotum, nec facit nisi bimembrem diuisionem: quandoque dicitur uotum proprie prout corde uel ore exprimitur, et tunc contrauenire est mortale peccatum secundum hanc distinctionem . . . H. dicit quod cum quis [dicit] uouet uel promittat se monachum fieri uel aliud, si est sane mentis tenetur; si alienate propter furorem uel infirmitatem, non tenetur. . . .' For the parallel passages from Huguccio, see n. 48 above.

⁵⁸ On Richardus see Schulte, *Geschichte der Quellen* 1.183-185; Kuttner, *Repertorium* 222-227; P. Glorieux, *Répertoire des maîtres en théologie de Paris au XIII^e siècle* (2 vols. Paris 1933) 1.280-281; Stephan Kuttner, 'Ricardus Anglicus' DDC 7.676-681.

⁵⁹ *Glossa 'Ecce vicit leo'* to C. 27 q. 1 (Sankt Florian, Stiftsbibliothek MS XI.605, fol. 99^{rb}): 'Quandoque contrahitur autem his uerbis uotum: "voueo continentiam," "adstringo me ad continentiam," "do deo meam continentiam," sed non [marginal addition:] <"sic promitto" uel "iuro quod continebo," quia qui uouet se [deo] deo tradit, sed non> talis, immo fieri promittit uerbo, unde non est uoto obligatus, nisi intendat uouere, quia tunc tenetur uoto, non ex ui uerborum, sed ex intentione.'

⁶⁰ *Glossa Palatina* to D. 27 c.8 (Pal. lat. 658, fol. 7^{rb-va}): 'Ergo uotum de futuro non est uotum simplex, quia non proprie dicitur uotum, cum fit uoti quedam promissio sicut sponsalia futurarum nuptiarum, quia non tantum obligat; et ita uotum simplex est uotum de presenti sine sollempnitate.'

⁶¹ This doctrine was in large part borrowed from the Roman law of betrothal; see *Dig.* 45.1.134 and 23.1; *Cod.* 5.1; also Adolf Berger, *Encyclopedic Dictionary of Roman Law*

as a *deliberatio*, which is binding neither before God nor before the Church. At the next stage it becomes a *propositum*, which is binding before God, but not before the Church. In the last stage of its development, it is expressed in precise terms in *verba de presenti*. Thus expressed, the vow is binding before both God and the Church, unless it is nullified by reason of age, by reason of marriage (evidently applicable to vows of chastity, continence, and entrance into the religious life, but possibly applicable also to Crusade or pilgrimage vows), or by reason of an excess of enthusiasm (*feruor passionis*).⁶²

Shortly after the conclusion of the Fourth Lateran Council (thus probably between 1215 and 1217), the work of the more important earlier commentators on the *Decretum* was compiled and edited by a Bolognese canonist of German origin, Johann Zemeke, otherwise known as Joannes Teutonicus (c. 1170-1245/46).⁶³ This gloss apparatus was subsequently re-edited and expanded c. 1245 by yet another Bolognese professor, Bartholomaeus Brixien-sis († c. 1258).⁶⁴ His version of the apparatus of Joannes Teutonicus was accepted in the Universities as the standard exposition of the *Decretum* and is known, accordingly, as the *glossa ordinaria*.

In its treatment of the vow, the *glossa ordinaria* adopts the analysis of the taking of vows which appears in Huguccio's *Summa*: the three-stage scheme (*deliberatio* — *voluntas* — *votum*) is spelled out by Joannes Teutonicus in a gloss which follows Huguccio very closely, although Joannes also notes that Huguccio's assessment of the seriousness of breaking a commitment (*propositum*) is disputed by some.⁶⁵ Even a simple promise made to God or to public

(Transactions Amer. Philos. Soc. N.S. 43.2; Philadelphia 1953) s.v. 'sponsalia' at p. 713; W. W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian* (2d ed. Cambridge 1932) 112 n. 5; Paul Frédéric Girard, *Manuel élémentaire de droit romain* (8th ed. rev. by Félix Senn, Paris 1929, 163-164. On the canonistic adaptation of the Roman system of *sponsalia*, see especially C.30 q.5 c.3 and C.31 q.2-3; also Willibald M. Plöchl, *Geschichte des Kirchenrechts* (3 vols. to date; Wien 1955 —) 2.268-270; Hans Erich Feine, *Kirchliche Rechtsgeschichte I: Die katholische Kirche* (3d ed. Weimar 1955) 1.381-382; F.X. Wernz, *Ius Decretalium* (6 vols. Roma and Prati 1898-1912) 4/1.155-166; Z.B. Van Espen, *Jus canonicum universum* 2.1.12.1-2 (4 vols. Louvain 1753) 1.554-558.

⁶² *Glossa Palatina* to C.17 q.1 (MS cit. fol. 60^{va}) and Richardus Anglicus, *Distinctiones Decretorum* to C.17 q.2 c.1 (British Museum, MS Royal 10.C.III. fol. 28^r).

⁶³ Schulte, *Geschichte der Quellen* 1.172-175; Sven Stelling-Michaud, 'Jean le Teutonique,' DDC 6.120-122; and especially Kuttner, *Repertorium* 93-99.

⁶⁴ Schulte, *Geschichte der Quellen* 2.83-88; Gabriel Le Bras, 'Bartholomaeus Brixien-sis,' DDC 2.216-217; and Kuttner, *Repertorium* 103-115.

⁶⁵ *Glos. ord.* to C.17 q.1 pr., v. *a voto* (This and the following citations are from the Venice 1600, edition): 'Hic queritur an licet alicui discedere a voto. Et in hac quaestione magister distinguit quod aliud est votum conceptum corde ore simpliciter pronunciare et aliud est obligatione aliqua se obnoxium facere; sed tamen quocunque istorum modorum quis voveat non liceat ei recedere a voto quoad Deum: sed quoad ecclesiam licet a primo voto ei recedere, sed non a secundo. Sed mirum videtur cum hoc sit peccatum quoad Deum, quare ecclesia

authority is likewise held to be enforceable, although the means and techniques for so doing are rather vaguely spelled out.⁶⁶ To be enforceable at all, however, a vow must be pronounced aloud, not merely assented to in the heart.⁶⁷ The means of solemnizing vows are described in some detail, although the terms of this passage are specifically applicable only to vows of continence and religion.⁶⁸ Solemnization of vows should generally take place before a

illud tolerat: cum hoc sit laqueum injicere talibus et decipere animas eorum: quod non est faciendum, . . . cum dominus ipse noluit facere differentiam inter iuramentum et simplicem loquelam. . . . Potest melius distingui inter deliberationem et voluntatem et votum. Si quis recedit a deliberatione, non peccat mortaliter. Si quis autem recedat a deliberatione, non peccat mortaliter. Si quis autem secedit a proposito quod firme fixerat in animo suo, peccat: sed venialiter secundum quosdam, . . . secundum Hug. vero peccat talis mortaliter, ac si verbis vovisset. . . . Sed a voto quod verbis exprimitur sive cum solemnitate, sive sine ea, non licet recedere sine mortali peccato secundum omnes . . . ; licet Alexander videatur dicere, quod post votum simplex potest contrahi matrimonium Sed illud intelligas de comparativa promissione. Ioan.' Likewise, *glos. ord.* to C.17 q.1 c.4 v. *deliberant*: 'firmiter proponendo, et tunc secundum Hu. peccant mortaliter, secundum alios venialiter' — to which a later marginal gloss adds: 'Haec sententia Hu. approbatur per Lau. Gof. et D.: extra de voto, literaturam.' Again, *glos. ord.* to C.17 q.1 d.p.c.4, v. *pronunciat*: 'Ergo obligatur quis ex solo proposito cordis, quod Hug. concedit.'

⁶⁶ *Glos. ord.* to C.12 q.1 c.9 v. *pollicitationem*: 'Nota quod ex nuda pollicitatione, quam quis facit Deo, potest contravenire . . . sic ex nuda pollicitatione facta Reipublicae . . . ' *Glos. ord. Casus* to C.22 q.5 c.12, v. *iuramenti*: 'Adhuc probat Gratianus per hoc capitulum quod iuramentum debet intelligi secundum intentionem proferentis. Dicit ergo Chromatius [i.e. the author of c. 12 cit. (from *Tract. in Matth.* 10, PL 20.352). Both Gratian and the gloss gave the name as Chrysostomus; the emendation comes from the *Correctores Romani*] quod quicumque iurat, ideo iurare debet, vt verum loquatur; vnde Deus inter iuramentum et communem loquelam differentiam non facit: quia sicut in iuramento non debet esse perfidia, ita nec in loquela nostra: etsi quis contrafecerit, poena divini iudicij damnabitur, et hoc probat auctoritate domini dicentis: Os quod mentitur, etc. [Wisdom 1.11] *Ibid.* gl. v. *distantium*: 'Quantum ad hoc, cum mortaliter peccat qui simpliciter dicit falsum, sicut qui sub iuramento dicit falsum, magis tamen peccat periurando quam mentiendo solidius subsistit vbi iuramentum interponitur . . . sed tamen plus operatur sacramentum, quam simplex promissio . . . Io.' A later marginal gloss adds: 'Dic ergo quod licet Deus non faciat differentiam inter loquelam et iuramentum, ecclesia tamen facit, quia mendax simplex non patitur poenam quoad infamiam et repulsionem testimonij, vel quin possit promoueri: sed secus in mendace iuramento et hoc intelligas, ex quo simpliciter mendax est de crimine emendatus, secundum Decretales extra. de testibus, testimonium [X 2.20.54], secundum H[ostiensem].'

⁶⁷ *Glos. ord.* to C.27 q.2 d.p.c.2, v. *ore*: 'Expressio enim oris in voto multum operatur . . . Videtur tamen quo ad deum non sit necessaria oris confessio, 22 q.5 humanae [c.11] et cap. cauete [c.20] et 24 [*recte*: 14] q.5 si quid [c.6]. Sed tamen secus est in voto tacito quam expresso. Nam dicit lex, quod si legavi tibi decem, si volueris, tale legatum non transmittes ad haeredes, nisi primo expresseris te voluisse; secus vero est si legauero tibi X pure: quia illud transmittes. . . . Immo nec votum dicitur conditionale vbi conditio subintelligitur . . . Ioan.'

⁶⁸ *Glos. ord.* to C.27 q.1 c.1, v. *sub testimonio*: 'Nam ita solemnizatur uotum (vt dicunt quidam) cum scilicet accepit vestem ab episcopo, ut hic, vel de manu presbyterorum, vel ministri. . . . Quod credo, dum tamen emittat uotum. Nam alias vestes tantum accipiendo non obligatur solemniter, sed simpliciter. . . . Vbi etiam habes, quod solemnizatur voto in

priest or other ecclesiastical authority, according to the *glossa ordinaria*, but this is not absolutely essential, since a vow may even be solemnized before a private person.⁶⁹ The essence of solemnization resides in the performance of a formal act, such as the investiture with religious garb, or a formal declaration of the terms of a vow in a public manner, whether before a priest or not. A formal vow, further, should be expressed in *verbis de praesenti*, as this form of expression binds more strictly than a vow expressed in *verbis de futuro*.⁷⁰ In any event, it is the intention of the person making the vow, rather than the form of words which he uses, which is to be attended to in determining the character and binding power of the vow.⁷¹ While it is admitted as a general principle that any undertaking may licitly be violated under some circumstances,⁷² the *glossa ordinaria* discusses only a few situations in which a vow may be properly broken and all of these arise out of defects in the vow itself (lack of majority, lack of proper or sufficient authority, or lack of deliberation).⁷³

manu abbatis vel abbatissae. Item solemnizatur si per seipsam recipiat habitum, et incipiat cum alijs cantare in ecclesia. . . . Et nota quod uotum continentiae solemnizatur tribus modis tantum. Sacri ordinis susceptione, 28 distinct. diaconi [c. 8]. Secundo dum accipit uestem sacram a quocumque: dum tamen post susceptionem incipiat cohabitare cum alijs monachis et monialibus in ecclesia, infra eadem, vidua [c.34]. Tertio, cum ita dicit coram episcopo vel abbate vel abbatissa, vel coram tribus vel duobus testibus, "ego deuoueo me huic religioni." Hoc enim aliud est, et aliud cum dico, "ego voueo continentiam," deuotus enim religioni non posset contrahere ita quod matrimonium teneret, nec mirum, cum etiam iam contractum matrimonium religio dissoluat. . . . Sed in voto continentiae secus, non enim votum dirimit, vnde si coram tota ecclesia diceret, "voueo continentiam," per hoc non solemnizatur votum: nisi velis dicere, quod tale votum non dirimit, sed constitutio ecclesiae super voto facta. Nam si votum dirimeret, quare potius vnum quam aliud, si hoc haberet ex sua natura? Et ita dirimeret votum simpliciter, quod Augustinus non vult, infra eadem, nuptiarum [c.41]. Dic ergo votum nunquam solemnizari, nisi tribus modis praedictis. Et ita exaudi quod dicitur. Ioan.'

⁶⁹ *Glos. ord.* to C.20 q.1 c.16, v. *vel ministro*: 'Arg. quod votum solemnne potest fieri coram priuata persona; sed ad quid facit mulier professionem sacerdoti? Potius enim deberet facere abbatissae. Sed hoc ideo fit, quia foeminis non licet imponere velum alicui. . . .'

⁷⁰ *Glos. ord.* to D.3 de pen. c.26, v. *quanto*: 'Arg. votum de praesenti magis obligare quam votum de futuro, arg. contra extra qui clerici vel voventes, rursus [X 4.6.6], vbi dicitur, quod simplex votum non minus obligat quam solenne.'

⁷¹ *Glos. ord.* to C.22 q.2 c.4 v. *Instituta*: 'Semper ergo in priuilegiis, vel in rescriptis interpretabuntur verba ad id quod instituta sunt . . . et semper ad communem intelligentiam, etc. . . . Sed contra plerumque dum proprietates verborum attenditur, veritas sensus emittitur . . . nam potius mens attenditur, quam verba considerata sunt. . . .'

⁷² *Glos. ord.* to C.22 q.2 c.5, v. *diuina*: 'Quod omnia vincula humana franguntur, 19 q.2 duae sunt [c.2], et secundum quam dispositionem est licitum, quod alias est illicitum, vt 14 q.5 dixit [c.12]. Et est arguendum hic, quod in omni voto vel sacramento intelliguntur huiusmodi generales conditiones: si Deus voluerit, si vixero, si potero . . . et etiam haec, si marito placuerit. . . .'

⁷³ *Glos. ord.* to C.20 q.1, v. *quod intra annos*; to C.17 q.1 c.1, v. *necessario*; to C.22 q.4 c.17, v. *emendatio*; and to C.17 q.4 c.3, v. *non iudicio perpetuo*.

The only apparent exception to this general rule is the discussion of the rescinding of a vow by reason of the obligations involved in taking a greater vow.⁷⁴ Dispensation is treated in the *glossa ordinaria* as a relaxation of the general law in favor of an individual, which may be granted by a person properly empowered so to do, who has knowledge of the facts of the case.⁷⁵ A dispensation is not granted as a matter of law or of right, but only as an exception to the law in individual cases⁷⁶ and even then only in matters which are properly dispensable, for the *glossa ordinaria* underscores Gratian's teaching that in some matters no dispensation may be granted at all.⁷⁷ Elsewhere, however, the gloss (drawing apparently upon the *Distinctiones* of Richardus) notes some exceptional instances in which dispensations may be granted even against the most sacred authorities.⁷⁸ As for dispensations from vows in particular, Joannes Teutonicus holds that the basis of dispensation from them lies in the unexpressed conditions which are part of every vow. If these necessary conditions are not fulfilled, the vow may licitly be dispensed from.⁷⁹ Further he notes that what are commonly referred to as dispensations from pilgrimage vows are not in fact true dispensations (in which the obligations arising from the vow are nullified), but rather commutations, by which the pilgrimage obligation arising from the vow is transmuted into a different and 'better' obligation.⁸⁰ Lastly, the exercise of the dispensing power is treated in the *glossa ordinaria* as a kind of residual power of the bishop, who may dispense from any matter in which episcopal dispensation is not expressly prohibited.⁸¹

⁷⁴ *Glos. ord.* to C.22 q.2 c.5, v. *maioribus*.

⁷⁵ *Glos. ord.* to C.1 q.7 d.p.c.5, v. *ut plerisque*: 'Dispensatio est iuris communis relaxatio facta cum cause cognitione ab eo, qui ius habet dispensandi.'

⁷⁶ *Glos. ord.* to C.1 q.7 c.16, v. *a debito*; See also *glos. ord.* to D.50 c.24 v. *Detrahendum est*.

⁷⁷ *Glos. ord.* to C.1 q.7 c.23, v. *Et si ea ipsa*: 'Si in dispensationibus non debet iudex dispensare nisi ex magna causa, quanto magis in ijs quae sunt indispensabilia nullo modo debet iudex dispensare.'

⁷⁸ *Glos. ord.* to C.25 q.1 c.6, v. *Apostoli*: 'Hic videtur quod papa non possit dispensare contra Apostolum, vel Dominum; qualiter ergo Martinus dispensavit cum bigamo contra Apostolum?... Item cum canon Apostolorum dicat, presbyter si fornicatus fuerit, deponatur... quomodo ergo Gangrense concilium dispensat in tali casu? Item contra Dominum dispensavit, qui dixit, 'Vouete, et reddite,' et tamen absoluit a iuramento et a uoto.... Satis potest sustineri quod papa contra Apostolum dispensat: non tamen in his, quae pertinent ad articulos fidei. Eodem modo dispensat in Euangelio interpretando ipsum....'

⁷⁹ *Glos. ord.* to C.22 q.2 c.5, v. *Diuina*: See note 72 above.

⁸⁰ *Glos. ord.* to C.25 q.1 c.6, v. *Apostoli*: 'Item non est vera dispensatio quae fit in voto peregrinationis quia non dicitur vouens liberari ab illa obligatione: sed potius dicitur in melius commutari... sed circa votum continentiae non posset dispensare, quia vix inveniretur melius in quod posset commutari....'

⁸¹ *Glos. ord.* to C.1 q.7 d.p.c.5, v. *ut plerisque*: 'De dispensatione episcoporum dico quod vbicumque non est eis prohibita dispensatio, ibi possunt dispensare....'

It is evident, then, that Gratian and his commentators up to the time of Joannes Teutonicus had made considerable strides in elaborating a general doctrine of vows. They had spelled out what they were and were not, they had analyzed the process by which a vow was made, and had attempted to define the obligations which arose at each stage of the process. They had begun to develop the theory of dispensation, too, which included dispensations from vows, and recognized the distinction between outright dispensation, or release from the obligations flowing from a vow, and commutation, by which the specific obligation was changed in character. What they had not done, however, was to define the specific nature of the Crusade vow and to deal with the special problems arising from this type of vow. That work was accomplished in part by a spate of new papal legislation and in part by the creative work of the new generation of canonists who from the 1190s onwards directed their attention to the interpretation and codification of the increasing bulk of decretal legislation which drastically modified and developed the existing canon law.

Two things are striking at first glance in the treatment of the vow in the six great decretal collections — the *Quinque compilationes antiquae* and the *Decretales Gregorii IX* — of the late twelfth and early thirteenth centuries. One thing is that, in all but one of these collections, a separate *titulus* of Book III is given over to the subject of vows. The other thing is that in these collections, for the first time in the canonistic literature, Crusade and pilgrimage vows are specifically dealt with and are, in fact, the principal subject of the decretal legislation incorporated in these collections.

The earliest of the six major decretal collections of this period is the *Breviarium extravagantium*, or *Compilatio prima*, compiled between 1187 and 1191 by Bernardus Papiensis, a Bolognese master and a former student of Huguccio.⁸² In the *Compilatio prima*, the title *De voto et voti redemptione*⁸³ contains only two decretals, both of Alexander III (1159-1181). These two decretals are concerned with the methods by which a vow may be dispensed from, the circumstances under which it may be redeemed, and the possibility of commuting it to some other form of observance. These three matters — dispensation, redemption, and commutation — receive major emphasis, too, in subsequent decretalist legislation concerning the vow. With specific reference to the Crusade vow, this new emphasis on the methods of escaping the fulfill-

⁸² Schulte, *Geschichte der Quellen* 1.175-182; Kuttner, *Repertorium* 322-324; Gabriel Le Bras, 'Bernard de Pavie,' DDC 2.782-789. The *Compilatio prima* is analyzed, together with the other four major pre-Gregorian collections, by E. Friedberg, *Quinque compilationes antiquae* (Leipzig 1882; repr. Graz 1956), pp. 1-65.

⁸³ *Comp. I* 3.29.1-2.

ment of the vow and the methods of satisfying it without performance of the act originally vowed would seem to reflect the papacy's recent experience with Crusade expeditions.

The end of the twelfth century found considerable dissatisfaction with the sort of miscellaneous expeditions which had made up the earlier Crusades. While the first Crusade had succeeded in achieving its goal, despite the fact that the Crusade army was encumbered by thousands of non-combatants of various kinds,⁸⁴ more recent Crusade expeditions had not been nearly so successful. The fiasco of the second Crusade (1146-1148) had already been laid in part to the miscellaneous composition of its forces by such commentators as the anonymous annalist of Würzburg.⁸⁵ Clearly what was wanted were armies of well-equipped, experienced fighting men, who might be able to achieve the military victories which were needed to re-establish the Latin states in the Levant. This had been perceived, indeed, by Urban II when he proclaimed the first Crusade. Subsequent experience had served to underscore the need to discourage the personal participation in these expeditions of the merely pious, and to convert their enthusiasm into some form of support which would make a more solid contribution to achieving the Crusade's goal than would their physical presence in the Crusade armies.

It is this experience and the papacy's consequent policy of converting the Crusade vows of those whose military usefulness to the Crusade was not apparent into other forms of assistance which is reflected in the decretal collections, beginning with *Compilatio I*. The later decretal collections among the *Quinque compilationes* further reinforce this impression. Briefly, in *Compilatio secunda*, composed by John of Wales between 1210 and 1212, the title *De voto* contains four decretals.⁸⁶ Three of the four deal with the commutation of vows and two of the three which treat this matter are specifically concerned with Crusade vows. The remaining decretal of this title reiterates the position, already familiar to the decretists, that a mental resolve (*conceptio*) to perform an act does not constitute a binding vow. Again, in *Compilatio III*, which was completed in 1209 by Pietro Collivaccino (otherwise known as Petrus Beneventanus), all five of the decretals in the title *De voto* deal specifically with Crusade vows and especially with the methods to be used in enforcing and commuting them.⁸⁷ The title *De voto* does not figure

⁸⁴ On the miscellaneous composition of the first Crusade expeditions, see especially Walter Porges, 'The Clergy, the Poor, and the Non-Combatants on the First Crusade,' *Speculum* 21 (1946) 1-21.

⁸⁵ *Annales Herbipolenses*, s.a. 1147 in MGH, SS 16.3; trans. in James A. Brundage, *The Crusades, A Documentary Survey* (Milwaukee 1962) 121-122.

⁸⁶ *Comp. II* 3.21.1-4.

⁸⁷ *Comp. III* 3.26.1-5.

at all in the small decretal collection known as *Compilatio quarta*, and in the last of the pre-Gregorian decretal collections, *Compilatio quinta*, prepared by the influential Bolognese professor, Tancredus, at the behest of Pope Honorius III (1216-1227), who authorized its publication in 1226, there is only one decretal under the title *De voto* and that one deals with the commutation of pilgrimage vows, rather than Crusade vows.⁸⁸ Lastly, there are eleven decretals under the title *De voto* in the great decretal collection promulgated by Pope Gregory IX in 1234. Of these eleven decretals, all save one are drawn from the *Quinque compilationes*.⁸⁹ That one decretal, while marking an important innovation in Crusade privileges, is only of minor significance for the doctrine of vows, since it merely reinforces the already acknowledged rules which required the fulfillment of votive obligations as a matter of primary importance in ecclesiastical discipline.

From all of this it is amply apparent that the decretal collections of the late twelfth and early thirteenth centuries fully reflect the increasing tendency of the papacy in this period to commute Crusade vows whenever the military usefulness of the person making the vow was not entirely clear. The pontificate of Innocent III seems crucial in this, as in so many other developments. Although relief from votive obligations, especially those stemming from the Crusade vow, had of course been granted by earlier pontiffs, the papacy up to the time of Innocent III had commonly insisted that those who took the Crusade vow should do so cautiously and with some sort of prior ecclesiastical counsel and approval. To what extent this earlier policy had been implemented in practice may be questioned, but the existence of the policy is clear, whether it was enforced or not. What happens during the pontificate of Innocent III is that the earlier policy is abandoned. In a letter of general circulation dispatched in April 1213, Innocent communicated his new policy to the bishops of the Western Church:

Since it happens that assistance to the Holy Land is much hindered or delayed if each one must be examined prior to taking the Cross as to his fitness and ability to fulfill the vow in person, we allow that (save for regulars), whoever wishes to take the sign of the Cross may do so, on the assumption that when dire necessity or plain usefulness may so require, the vow may be commuted, redeemed, or postponed by apostolic command.⁹⁰

⁸⁸ *Comp.* V 3.19.un.

⁸⁹ See the tabulation on the opposite page.

⁹⁰ Innocent III, *Registrum* 16.28 (PL 116.819-820; = Po 4725): 'Quia vero subsidium terrae sanctae multum impediri vel retardari contingeret si ante susceptionem crucis examinari quamlibet oportet an esset idoneus et sufficiens ad huiusmodi votum personaliter prosequendum, concedimus ut, regularibus personis exceptis, suscipiat quicumque voluerit signum crucis; ita quod cum urgens necessitas aut evidens utilitas postulaverit, votum ipsum de apostolico possit mandato commutari aut redimi vel differri.'

<i>Incipit</i>	<i>Pontiff</i>	<i>Date</i>	<i>Register</i>	<i>Quinque Compilationes</i>	<i>Decre- tales Greg. IX</i>
De peregrina- tionis ^a	Alex. III	1164-65?	JL 13916 (part of 13907)	Comp. I 3.29.1	3.34.1
Venientes ad nos ^b	Alex. III	1169-70	JL 11339	Comp. I 3.29.2	3.34.2
Litteraturam	Alex. III	1159-81	JL 14150	Comp. II 3.21.1	3.34.3
Scripturae	Alex. III	1159-81	JL 13848	Comp. II 3.21.2	3.34.4
Ad audientiam	Alex. III	1159-81	JL 14077	Comp. II 3.21.3	
Perpendimus ^c	Clem. III	Aug. 12 1190	JL 16552	Comp. II 3.21.4	
Non est voti	Innoc. III	Jan. 9- Feb. 21 1198	Po 14	Comp. III 3.26.1	3.34.5
Licet	Innoc. III	Jan. 29 1198	Po 4	Comp. III 3.26.2	3.34.6
Magnae	Innoc. III	Mar. 15 1198	Po 48	Comp. III 3.26.3	3.34.7
Quod super his	Innoc. III	Aug.-Oct. 1200	Po 1137	Comp. III 3.26.4	3.34.8
Ex multa	Innoc. III	Sept. 1201	Po 1469	Comp. III 3.26.5	3.34.9
Per tuas	Innoc. III	Aug. 7 1213	Po 4789		3.34.10
Postulastis	Hon. III	Dec. 2 1216	Pressutti 137	Comp. V 3.20.1	3.34.11
A. Presbyter	Hon. III	Nov. 4 1216	Pressutti 85	Comp. V 3.19.1	

a) For the date see W. Holtzmann, 'Die Register Papst Alexanders III. . .,' *Quellen und Forschungen aus ital. Arch.* 30 (1940) 51. b) For the date, *ibid.* 31, 38-40.

c) Complete text in Holtzmann, 'Krone und Kirche in Norwegen . . .,' *Deutsches Archiv für Geschichte des Mittelalters* 2 (1938) 395-6; for the date see Holtzmann, 'La Collectio Seguntina,' *Revue d'hist. ecclés.* 50 (1955) 427 No. 28.

Although some of the most eminent twelfth-century decretists — notably Rufinus and Huguccio — had denied the possibility of any dispensation from any kind of unconditional vow at all,⁹¹ the possibility had increasingly been admitted in principle by the writers of the latter part of the century. This line of development is carried forward and reinforced by the incorporation in the thirteenth century decretal collections of papal rulings governing these practices, and much of the commentary of the decretalists upon the title *De voto* in the collections is devoted to an attempt to provide a doctrinal system which would integrate, clarify, and explain the practice of releasing persons from votive obligations.

One of the earliest and most significant of the decretalist commentaries is the *Summa decretalium* (written between 1191 and 1198) by Bernard of Pavia, the redactor of *Compilatio prima*. In his *Summa*, Bernard identifies two methods by which a vow may be voided: by the lack of a necessary condition and by the power of a superior. The lack of a necessary condition is applicable, according to Bernard, only to a conditional vow, i.e. one in which an express stipulation of an antecedent condition is involved in the formulation of the vow itself. Where such a condition has been stipulated, the lack of the requisite condition, Bernard teaches, will nullify the vow and thus quash any obligations arising from it. In dealing with the power of a superior to void the vow of a subject, Bernard deals expressly with the situations already envisioned by Gratian: the nullification of a monk's vow by his abbot, of a serf's vow by his lord, of a minor's vow by his parent or guardian, and of a wife's vow by her husband.⁹²

Vows in general Bernard divides into two classes: those which are fulfilled by not performing an act (such as abstention from food or from sexual intercourse) and those which are fulfilled by performing an act (such as a pilgrimage vow).⁹³ Further, he distinguishes between those vows which may be redeemed and those which may not. Redeemable vows, in his terminology, are vows which are fulfilled by performing an act and also vows of abstinence. Irredeemable vows are solemn vows of chastity, although Bernard holds that simple vows of chastity may be redeemed in order to avert a greater evil than the non-observance of the vow. Redemption of a vow may be prescribed by bishops at their discretion, although they should take into account the character of the person involved and the nature of the act of redemption

⁹¹ As noted by J. de Brys, *De dispensationibus in iure canonico* 129-131. See especially Rufinus, *Summa* to C.1 q.7 d.a.c. 6 (ed. Singer 234); Huguccio, *Summa* to C.17 q.1 pr. (Paris, BN MS lat. 3892, fol. 243^v).

⁹² *Summa decretalium* 3.29.5, ed. E. A. T. Laspeyres (Regensburg 1860; repr. Graz 1956) p. 114; also in Bernard's *Summa de matrimonio* 3.1 (ed. Laspeyres pp. 287-288).

⁹³ *Summa decretalium* 3.29.2 (Laspeyres 113-114).

prescribed, such as almsgiving, fasting, and prayer. Simple vows, on the other hand, may be revoked even without redemption if the revocation is necessary in order to avert a more serious evil.⁹⁴ Treating elsewhere of the dispensing power, Bernard takes the position that Bishops may dispense only in matters where this power has been specifically delegated to them. Otherwise, the only power competent to dispense from a law is the power competent to establish the law which is dispensed from.⁹⁵

An *Apparatus* from the school of Petrus Brito to *Compilatio prima* (written in the early thirteenth century)⁹⁶ takes a more permissive view of the dispensing power. He tells us that while some go so far as to teach that any person exercising the cure of souls may dispense in matters concerning those subject to him, recourse should nevertheless be had to the bishop in questions of dispensation. He thus implies rather clearly that the normal power of dispensation is vested in the bishop and that inferior clerics exercise the dispensing power as the bishop's delegates. An exception to this rule, the author notes, is the dispensation from the vow of continence, but he adds that it is an exception simply because there is no greater good which can be substituted for continence — an explanation which makes it clear that when he speaks of dispensation, the author is really thinking of the redemption of vows.⁹⁷ With specific reference to pilgrimage vows, he warns that illness is in itself not a sufficient reason for allowing a vow to be redeemed. Redemption of a pilgrimage vow should be granted only when the illness is so grave that it would make the journey impossible or dangerous. Further, the glossator agrees with Petrus Brito that redemption of pilgrim vows is not a prerogative of the rich, but a privilege which may be granted to those who are poor and infirm.⁹⁸

⁹⁴ *Summa decretalium* 3.29.3-4 (Laspeyres 114).

⁹⁵ *Summa decretalium* 5.2.6 (Laspeyres 205-206).

⁹⁶ For various compilations and *apparatus* of glosses from the school of Petrus Brito, see Kuttner, 'Bernardus Compostellanus . . . ' (n. 56 *supra*) 317 n. 54; Walter Ullmann, *Medieval Papalism* (London 1949) 208-210 (on the Lambeth MS here cited); Weigand, 'Neue Mitteilungen . . . ' (n. 56 *supra*) 487-491.

⁹⁷ *Apparatus to Comp. I* 3.29.1, v. *presidet* (London Lambeth Palace Library, MS 105, fol. 180^{ra}): 'Patet quod episcopus in votis dispensare potest; idem videtur de quolibet prelato per hoc quod dicit "presidet" quod quidam concedunt de quolibet qui habet curam animarum quod potest dispensare circa subditos suos. Sed Petrus Brito [p. B¹ scr.] dicit quod semper recurrendum est in huiusmodi ad episcopum et est generale quod hic dicitur in votis abstinentie. . . . In votis continentie secus, quia iusta compensatione redimi non potest, cum nihil melius continentia . . . quia incurie [?] preter carnem vivere non terrena vita est, sed celestis.' The Lambeth MS contains also glosses of Richardus Anglicus, but none on *De voto*.

⁹⁸ *Ibid.* v. *infirmirate* 'Si de tali que iter impediat, non imputatur et sic non est in redemptione; si non impediat dic de tali, intelligens: nisi periculum iminet si perficiat.' v. *divitiarum* 'Quidam arguunt hic pro divitibus, xl. d. non cogantur [D. 41 c.3]; Petrus Brito e

The question of the dispensability of pilgrimage vows is also discussed by Alanus Anglicus in his *Apparatus to Compilatio prima* (written between 1201 and 1210).⁹⁹ The commutation of a vow, Alanus holds, is neither contrary to the natural law nor an infraction, properly speaking, of the original vow and hence commutations are possible. As to outright dispensations from vows, he reports the views of certain persons who teach that vows may not be dispensed, since a vow creates an obligation under the natural law and dispensations against the natural law are not permitted. In mitigation of this position, however, Alanus advances the argument that only some of the precepts of the natural law are indispensable and, further, that every vow or oath implies certain necessary conditions, among them the condition 'unless the pope shall direct otherwise' and thus, he reasons, the pope may in effect revoke any vow.¹⁰⁰ Alanus goes further than most of his contemporaries when he argues that vows of abstinence and continence may be dispensed from. Indeed, he declares that any freely made vow may be dispensed¹⁰¹ and that vows made in childhood (before puberty) may be dispensed without any sort of compensation whatever,¹⁰² while hastily made vows are not binding at all.¹⁰³

contra intelligit, qui ita delicati sunt quod nolunt implere votum suum; cum talibus non est dispensandum, sed cum pauperibus infirmis.'

⁹⁹ E. Magnin, 'Alain de Galles,' DDC 1.361; Kuttner, *Repertorium* 325-326; Schulte, *Geschichte der Quellen* 1.188-189. I have consulted two MSS of Alanus' *Apparatus*: Paris, BN, Ms. Lat. 3932, and the second stratum of glosses in Clm. 3879 of the Bayerische Staatsbibliothek, Munich. On these MSS see Kuttner, *Repertorium* 332-333.

¹⁰⁰ Alanus, *Apparatus to Comp. I* 3.29.1 v. *dispensare* (Clm. 3879, fol. 55^{rb} and BN lat. 3932, fol. 39^{ra}): 'Hec dispensatio non est contra ius naturale, non enim est voti fractio. Non enim uotum uel iuramentum frangit qui illud commutat in melius. . . . Sed an papa possit sine aliqua recompensatione uotum remittere queritur, et dicunt quidam quod non quantum ad deum, quoniam contra ius naturale non potest dispensare. Sed uotum est de iure naturali, id est uoti redemptio. Quantum ad ecclesiam tamen potest omnem penam remittere pro uoti fractione infligendam. Vel dicatur quod possit, nec inuenitur sibi prohibita dispensatio contra ius naturale in aliquo iure. Constitutionem tamen contraria iuri naturali facere non posset nec etiam contra quedam precepta iuris naturalis dispensare, vt est istud, "diliges dominum deum tuum" [Deut. 6.5]. Vel dicitur ut prius quod non potest dispensare, si tamen uotum remittat, ualet remissio, quoniam in omni uoto et iuramento quedam tacite conditiones subintelliguntur, inter quas et ista est: "nisi papa aliter disposuerit"'

¹⁰¹ *Ibid.* v. *recompensatio* 'In omni uoto, siue abstinence siue continentie, siue consistat in faciendo siue in non faciendo, siue sit simplex <siue> solempne, locum habet compensatio, dummodo ante uotum libere fuit uoluntatis. Hoc ideo adicio quia articulos fidei uouet unusquisque in baptismo, ante tamen baptismum illud uotum est necessitatis et non libere uoluntatis. Quidam excipiunt uotum continencie cui eque bonum inueniri non potest . . . et ideo perdque bono compensari non potest; sed uerius quod possit. . . .'

¹⁰² *Ibid.* to 3.29.2, v. *in puerili etate* (Clm. 3879, fol. 55^{rb}): 'Ergo pubes factus sine omni recompensatione posset a uoto recedere. . . . Quare ergo in fine compensatur. Respondes ad cautelam habundantem, uel quod melius est, ratum habuit uotum postquam adoleuit.'

¹⁰³ *Ibid.* v. *facilitate* 'ar. uotum ex facilitate [*ms.*: facultate] emissum non esse obligato-

Tancredus (c. 1185-c. 1235), in his *Apparatus to Compilatio prima* (written between 1210 and 1215), which became the *glossa ordinaria* for this collection,¹⁰⁴ while recognizing the position of Alanus, whom he quotes almost verbatim, took exception to the notion that the vow of continence might be subject to commutation or redemption. Although a commutation of any other freely made vow might be allowed, Tancredus stuck firmly to the position that the vow of continence was an exception, since there was no equivalent good which could be substituted for consecrated virginity.¹⁰⁵ As for pilgrimage vows, Tancredus does not question the fact that they may be commuted into other observances. Rather, he discusses the authority competent to grant the commutation, concluding that bishops are competent to deal with all pilgrimage vows, save for the Crusade vow, which is reserved to the pope alone.¹⁰⁶ Regarding vows made by minors, Tancredus cites the view of Alanus that they are not binding unless they are ratified after reaching maturity, and adds a note with supporting arguments.¹⁰⁷

The *Apparatus to Compilatio III* written by Vincentius Hispanus before 1215¹⁰⁸ questions the norms laid down in the decretal *Quod super his* (*Comp. III* 3.26.4 = X 3.34.8) for estimating the compensation to be required for the commutation of the Crusade vow. As Vincentius sensibly remarks, the amount to be assessed as compensation for the effort which would have been expended in journeying to the Holy Land might be somewhat difficult to determine;

rium. . . .’ This gloss is also incorporated under the siglum of Richardus, in the *Apparatus* of Tancredus (Cambridge, Gonville and Caius College, MS 28/17, p. 76^b, and Durham Cathedral Library, MS C.III.4, fol. 34^{rb}).

¹⁰⁴ On Tancredus and his *Apparatus* see Schulte, *Geschichte der Quellen*, 1.199-205; Kuttner, *Repertorium*, pp. 327-328; L. Chevailler, ‘Tancrède,’ DDC 7.1146-1165.

¹⁰⁵ Tancredus, *Apparatus to Comp. I* 3.29.1, v. *recompensatio* (Gonville and Caius College, MS 28/27, p. 76^b: ‘In omni uoto . . . sed uerius est quod possit . . . ala. [See text in note 101 *supra*] Mihi uidetur quod circa uotum continencie nullus dispensare potest, quod asserit vinc(en)-tius) . . . et hec est causa, quia in uoto continencie commutacio non admittitur. t.’

¹⁰⁶ *Ibid.* v. *dependet*: ‘Ergo auctoritate propria non debet quis redimere uotum, sed superioris. Sed nunquid prelatus quilibet potest auctoritatem prestare ad commutationem [*ms.*: coniunctionem] uoti? Quidam dicunt quod nullus nisi papa uel qui speciale mandatum ab eo super hoc recepit . . . [citing Innocent III *Ex multa Comp. III* 3.26.5]. Ego dico quod omnibus episcopis licet, et illud [*i.e.* the text just cited] speciale in his qui crucem acceperunt ierosolimam profecturi. t.’

¹⁰⁷ *Ibid.* to 3.29.2. v. *ueniens in puerili*: ‘Doli tamen capaces; alioquin compensatio que sequitur non esset imposita. Respondes: uel ideo imponitur quia in adulta etate ratum habuit uotum quod in puericia emisit et ita tenebatur id adimplere. al. Nota ar. xx. q. i. Illud [*ms.*: istud], supra de regularibus c. ult. [C.20 q.1 c.10; *Comp. I* 3.27.11 = X 3.31.11] t.’

¹⁰⁸ On Vincentius see Schulte, *Geschichte der Quellen* 1.191-193; Gaines Post, ‘Blessed Lady Spain—Vincentius Hispanus and Spanish National Imperialism in the Thirteenth Century,’ *Speculum* 29 (1954) 198-209; Javier Ochoa Sanz, *Vicentius Hispanus, canonista boloñes del siglo XIII* (Rome-Madrid 1960); Kuttner, *Repertorium* 356-357 and ‘Notes on Manuscripts,’ *Traditio* 17 (1961) 537-541; R. Chabanne, ‘Vincent d’Espagne’ DDC 7.1507-1508.

he concluded, however, that the terms of the decretal *Licet* (*Comp. III* 3.26.2 = X 3.34.5) would seem to indicate that the calculation need not be a highly precise one.¹⁰⁹ On the question of dispensation, Vincentius reports that although some would accept the pope's right to dispense from pilgrimage vows on the grounds that a more acceptable substitute might replace the pilgrimage itself, they would deny his power to dispense from the vow of continence, on the grounds that there is nothing more acceptable to God which could be substituted for the practice of continence. Vincentius' own solution to the problem seems to rest on the theory that only those practices which are contrary to faith and those forms of usury which are forbidden in the Old Testament are absolutely indispensable.¹¹⁰ It may accordingly be inferred that he recognized the papal power to dispense from all vows, even including the vow of chastity. The concept of the heritability of the obligation to fulfill the Crusade vow and the provision of *Licet* that the fulfillment of this inherited obligation may be compelled by deprivation of inherited goods Vincentius explains as an extension of existing law as a favor to the Holy Land.¹¹¹ The provision of the decretal *Ex multa* (*Comp. III* 3.26.5 = X 3.34.9) that a man may take the Crusade vow without his wife's consent he also treats as a special exception to the general rule on such matters granted as a special favor for the Holy Land.¹¹²

¹⁰⁹ Vincentius, *Apparatus* to *Comp. III* 3.26.4, v. *recompensatio* (MS Vat. lat. 1378, fol. 75^{rb}): 'Numquid tantum mittent pro quanto uellent tantum [*ms*: tñ] laborem sustinere uti quia in multis hoc esset difficile estimare cum pro sola salute anime illud sustinerent, sed forte hec compensatio fiet non cum tanta districtione ar. e. t. licet.'

¹¹⁰ *Ibid.* to 3.26.1, v. *voti* (Vat. lat. 1378, fol. 74^{ra}): '... Cum enim quis uoue<t> peregrinari, subintelligitur "si commode fieri potest" [*corr. ex* potuit]... Alii dicunt quod circa uotum peregrinationis potest papa dispensare sed <non> circa uotum continencie quia est de maioribus bonis... et nichil acceptabilius deo quam continentia. Tercii dicunt quod etiam in uoto continencie potest... Soli autem [*ms. add. de*] fidei et ea que prohibita sunt in ueteri testamento <vt> vsure sunt indispensabilia.' This passage, with the *siglum* of Vincentius, occurs also in the *Apparatus* of Tancredus (Gonville and Caius College, MS 28/17, p. 267^a) and in the apparatus of mixed glosses of Munich, Clm. 3879, fol. 227^{vb}.

¹¹¹ Vincentius, *op. cit.* to 3.26.2, v. *regnum* (Vat. lat. 1378, fol. 74^{rb}): 'Huius canonis rigor legem uincit in [*ms. add. et cancell. auctoritate*] asperitate. Lex enim [*ms. omni*] soli extraneo heredi [*ms. hñ*] totum [*ms. quotum*] aufert, cum testatoris [*ms. contestatoris*] uoluntatem infra annum non implet... Aliis autem reseruat debitum [*corr. ex* delictum] naturale... Solutio: hic pena augetur in fauorem sancte terre; hanc tamen penam inposuit omnibus lex antiqua... uel hoc ideo quia regnum sicut marchia ducatus et comitatus non diuiduntur vt constitutione frederici de feudis § preterea de marchia.' This passage is also found in the gloss apparatus of Clm. 3879, fol. 228^{rb}.

¹¹² Vincentius to 3.26.5, v. *uxorem* (Vat. lat. 1378, fol. 75^{vb}): '... Solutio: illud, ut hic dicitur, est specialissimum in fauorem terre sancte et est hic expressum argumentum aliquid uotum esse maius [*ms. magis*] uoto continencie cum hoc propter continenciam non lliceret, vt in predictis contrariis; de uoto scripture contra l. ii [*Comp. II* 3.21.2 = X 3.34.4] et est hic ar. quod potest papa dispensare in uoto continencie.'

The glosses of Joannes Teutonicus to *Compilatio tertia* carry on the argument concerning the dispensing power. In one gloss bearing his *siglum*, Joannes posits the position that the pope may dispense from any save an article of faith; he also implies, somewhat ambiguously, that the vow of continence may be indispensable.¹¹³ He also adds a note in which he rejects the argument that the special privilege granted by the decretal *Ex multa* implies any superiority of value to the Crusade vow as compared with the vow of continence.¹¹⁴

Two passages in the *Apparatus* of Jacobus de Albenga¹¹⁵ to *Compilatio quinta* also raise interesting points concerning vows, citing in particular the opinions of Laurentius, Joannes, and Huguccio. One interesting opinion, attributed merely to 'alii,' holds that while the pope may dispense against the natural law, he may not make a law contrary to it, to which Jacobus adds that we may daily observe the pope granting dispensations against the natural law.¹¹⁶ In another passage, Jacobus notes that the Crusade obligation becomes binding as soon as the Cross has been taken, or when a vow to do so has been made.¹¹⁷ This passage is somewhat surprising, inasmuch as the usual assumption is that the Crusade vow precedes the taking of the Cross and, therefore, that the obligation comes into being at that point. Possibly Jacobus'

¹¹³ Gloss to *Comp. III* 3.26.1, v. *sedis apostolice* (Clm. 3879, fol. 227^v): 'Vnde si pape aliud placet per hoc non dispensat sed tantum suum velle declarat, vel dic quod papa in omnibus dispensat preterquam in articulo fidei. . . . Respondeo, aliud est in uoto continentie quam peregrinationis uel abstinentie uel dic ut ibi. Jo.'

¹¹⁴ Gloss to 3.26.5, v. *uxorem* (fol. 229^v): 'Specialissimus casus est iste quod uir possit facere uotum sine licentia uxoris . . . et per hoc uidetur quod aliquod uotum sit maius uoto continentie, nam propter continentiam non liceret fieri hoc . . . licet in uoto abstinentie secus dicam dum tamen per tale uotum neutri fiat preiudicium . . . Jo.'

¹¹⁵ Kuttner, *Repertorium* 383; Schulte, *Geschichte der Quellen* 1.205-207; J. Lips and H. Wagnon, 'Jacques ou Jacobus de Albenga,' DDC 6.77-78.

¹¹⁶ Jacobus de Albenga, *Apparatus* to *Comp. V* 3.19.un. v. *commutare* (BM. Royal 11.C. VII, fol. 263^v): 'Numquid sua auctoritate posset episcopus commutare? et dicunt [*ms. debent*] quidam quod nullus habet potestatem votum commutandi nisi papa vel qui habet speciale mandatum ab eo. . . . Laurentius contrarium dicit, et dicit quod quilibet episcopus habet potestatem uotum commutandi, et dicit speciale esse in his qui tenentur ierosolimam proficisci in succursum terre sancte, sed ei videtur contradicere littera ista que dicit "auctoritate nostra." Sed ipse dicit quod nichilominus auctoritate sua hoc posset facere . . . Sed Ioannes dicit hic quod papa <dixit> "auctoritate nostra" quia plus solet timeri, et cetera. . . . Sed numquid papa <posset> sine aliqua ex compensatione? H<uguccio> dicit quod non, quia hoc esset contra ius naturale; alii dicunt contrarium, nec reperitur prohibitum quia papa posset dispensare contra ius naturale, sed constitutionem iuri naturali contrarium facere non posset . . . contra ius naturale dispensare [*ms. add. posset*] papam cotidie videmus.'

¹¹⁷ *Ibid.* to 3.20.un. v. *tenemini* (fol. 263^v): 'Postquam alter signum crucis arripuerit vel dic quod reliquus firmiter proposuerat signum crucis assumere, quare sine peccato contravenire non poterat . . . vel forte votum emiserat.'

meaning was that when the Cross is taken the obligation becomes an open, public one, binding *in foro externo*, although a moral obligation to go on Crusade exists from the time of taking the vow or making a firm proposal to take the Cross.

Another significant treatment of the vow is found in the *Questiones* of Damasus Hungarus (written c. 1215) and in the *Summa* (written c. 1215-1217) of the same author.¹¹⁸ Although apparently original with him, Damasus' definition of the term 'vow' in his *Summa* as 'a firm promise made to God concerning matters relating to divine worship' does not seem to add a great deal to our understanding of the subject.¹¹⁹ Of more importance is his treatment of simple and solemn vows, since his notion of the solemn vow in particular is rather unusual. He distinguishes between the two species of vow by declaring that simple vows may involve either a promise to perform actions or a promise not to perform them, while solemn vows involve only promises not to perform actions. On this basis he concludes that only the vow of continence may be solemnized.¹²⁰ The basis of this distinction is difficult to fathom inasmuch as the quality of solemnity is not related by Damasus to the form of the vow at all, but only to its substance, i.e., the act which is promised. It is clear, in any case, that to Damasus' mind the Crusade vow and other pilgrimage vows were not solemn in character at all. This position contrasts sharply with that of the decretists in general and with that of most of the other decretalists as well.

In his *Questiones*, Damasus discusses two further problems involving vows. One of these is the familiar problem of the power to redeem from vows. After disposing of the argument that vows may not be dispensed at all, Damasus argues his way to the conclusion that the rule that the pope alone may determine the redemption of vows is a special case relating to the Crusade vow alone and that for all other vows the bishop is empowered to decide concerning commutation or redemption.¹²¹ Another of his *Questiones* concerns the doc-

¹¹⁸ Schulte, *Geschichte der Quellen* 1.194-196; Kuttner, *Repertorium* 393-396, 426-428, and 'Damasus als Glossator,' *ZRG kan. Abt.* 23 (1934) 380-390; C. Lefebvre, 'Damasus,' *DDC* 4.1014-1019.

¹¹⁹ Damasus, *Summa to Comp. I* 3.29 (Vat. Borgh. lat. 261, fol. fol. 6^{va} and Bodleian Laud. Misc. 646, fol. 117^{vb}): 'Uotum est firma mentis pollicitatio facta deo de his que ad cultum diuinum pertinent.'

¹²⁰ *Ibid.* 'Sunt autem [*om. autem ms. Bodl.*] voti due species; simplex et sollempne. Simplicia vota quedam consistunt in faciendo, ut ire ad sanctum iacobum, quedam in non faciendo, ut non contrahere. Sollempnia autem consistunt in non faciendo tantum, quia sola uota continentie sollempnizantur. . . .'

¹²¹ Damasus, *Questiones to Comp. III* 3.26.5 (Vat. Borgh. lat. 261, fol. 38^{rb} and Bodleian Laud. Misc. 646, fol. 95^{ra}): 'Queritur circa illam decretalem extra iii. eodem titulo [*scil:* De voto et voti redemptione] Ex multa, utrum hoc sit generale in quolibet uoto quod non [*ms. Vat. corr. ex nisi*] possit redimi nisi auctoritate pape uel eius delegati, et uidetur quod

trine of the heritability of vows, as described in the decretal *Licet*. The question precisely is whether a dying father may command his son to fulfill the father's pilgrimage vow as a condition of the inheritance of the father's estate. Although he admits the force of *Licet* in determining this case, Damasus argues that in interpreting the provisions of the decretal one should distinguish between an obligation to satisfy a pilgrimage vow by personal performance of the pilgrimage and the obligation to satisfy a pilgrimage vow by redemption of the vow. The former, he concludes, might not be imposed as a condition of inheritance, although the latter may be required.¹²²

In the *Questiones* of Bernardus Compostellanus antiquus¹²³ there is also a discussion of the pilgrimage vow, specifically of the right of a wife to forbid the fulfillment of a vow made by her husband before their marriage. Bernardus upholds the right of the man to fulfill the vow, noting however that

ad uoti obseruationem ex precepto diuino tenentur quo dicitur "uouete et reddite." Vnde semel obligatus ad obseruanciam illius precepti non poterit ab illo discedere nisi de auctoritate illius qui uicem dei tenet in terris, scilicet papa. Item probatur hoc per aliam decretalem quia iuramenti obseruatio descendit similiter ex precepto diuino et si quis uelit discedere ab obseruatione iuramenti illiciti, consulere debet papam. . . . Contra dicit Alexander simpliciter quod redemptio uoti potest fieri auctoritate illius qui presidet. Laboriosum enim esset quemlibet rusticellum et quamlibet mulierculam papam super hoc requirere et ideo sufficit episcoporum auctoritas . . . Item uelis nolis probo quod redemptio uoti siue commutatio potest fieri auctoritate episcopi. Ius enim commune est quod non uenit contra sacramentum uel uotum qui commutat illud in melius . . . Si ergo commutet in melius et constet quod melius sit illud quod fecit, non intelligitur transgressor uoti, puta si uoverit [*ms.* voluerit] uisitare limina sancti iacobi et postmodum ingrediatur religionem sua auctoritate; sed numquid si sine auctoritate superioris, peccabit? Non. . . . Si ergo potest auctoritate sua, ut certum est, cum in melius commutare poterit ubi dubium est fiat auctoritate sui episcopi, ut extra iii. de regularibus, *Licet* quibusdam [*Comp.* III 3.24.2] ubi is qui transit ad strictiorem religionem, si dubitetur an bono animo faciat, subit iudicium superioris. Solutio: speciale est quod dicitur in illa *Ex multa* [3.26.5] in uoto emisso in succursum terre sancte; in aliis commutationem facere potest episcopus . . . '

¹²² *Ibid.* to 3.26.2 (MS Borgh. fol. 38^{ra}-^{rb}, MS Laud. fol. 94^{vb}-95^{ra}): 'Queritur . . . utrum pater moriens possit iniungere filio ut compleat uotum peregrinationis quod pater emiserat et ita sit heres. . . . Item uult canon quod satisfactio possit fieri pro animabus defunctorum per elemosinas aut ieiunia cognatorum. Cum igitur licitum sit preceptum huius <modi> de satisfaciendo et possit per cognatos expediri ad quos successio deuoluitur, . . . si precipiat testator et heredes non adimpleant, illud amittent id quod habent de iudicio testatoris . . . Item expressum est quod testator possit iniungere heredibus suis satisfactionem que sibi incumbat . . . Contra lex dicit quod <si> aliquis instituerit filium suum sub conditione casuali uel mixta, non tenent institutio. . . . Immo etiam si preceptum testatoris teneret, si filii non faciant illud non priuabuntur propter hoc debita bonorum subsidio. . . . Solutio: non potest pater iniungere filio necessitatem peregrinandi, unde in illa *Licet* [3.26.2] ideo tenuit iniunctio [*ms.* inuencio] quia filius hoc approbavit; pecuniariam uero satisfactionem bene posset iniungere. . . . '

¹²³ Schulte, *Geschichte der Quellen* 1.190; Kuttner, 'Bernardus Compostellanus antiquus,' *Traditio* 1 (1943) 277-340; Paul Ourliac, 'Bernard de Compostelle l'ancien,' *DDC* 2.774-777.

this privilege applies only to Crusade vows, as specified in the decretal *Quod super his* (Comp. III 3.26.4 = X 3.34.8).¹²⁴

In his widely used *Summa de casibus penitentiae* (written between 1222 and 1228/29 and revised after 1234)¹²⁵ the great Catalan canonist, St. Raymond de Peñafort († 1275),¹²⁶ deals with the matter of vows at great length. St. Raymond begins his treatment of the theme by defining a vow as 'a promise of any good thing made with deliberation' and, while he admits the possibility that a vow might be made to perform an evil act, such a vow he declares would not be binding.¹²⁷ He then proceeds to distinguish the various types of vows. The first distinction here is between necessary and voluntary vows, i.e. those necessary for salvation and those undertaken out of piety and devotion.¹²⁸ The class of voluntary vows he then subdivides into simple and solemn types. While noting that the simple vow is no less binding, so far as God is concerned, than the solemn vow, St. Raymond nonetheless holds that breaking a solemn vow is more serious than breaking a simple vow and that the failure to fulfill a solemn vow is an offense against the public order

¹²⁴ G. Fransen, 'Deux collections de questiones,' *Traditio* 21 (1965) 492-510 at p. 496.

¹²⁵ Kuttner, 'Zur Entstehungsgeschichte der Summa de casibus des hl. Raymund von Penyafort,' *ZRG, kan. Abt.* 39 (1953) 419-434, and *Repertorium* 443-445.

¹²⁶ Sarti-Fattorini, *De claris professoribus* 1.408-409; Schulte, *Geschichte der Quellen* 2.408-413; Kuttner, *Repertorium*, pp. 438-452; A. Walz, 'S. Raymundi de Penyafort auctoritas in re paenitentiali,' *Angelicum* 12 (1935) 346-396; A. Teetaert, 'La "Summa de poenitentia" de Saint Raymond de Penyafort,' *Ephemerides theologicae Lovanienses* 5 (1928) 49-72 and '“Summa de matrimonio” Sancti Raymundi de Penyafort,' *Jus pontificium* 9 (1929) 54-61, 218-234, 312-322; Pierre Michaud-Quantin, 'A propos des premières summae confessorum,' *Recherches de théologie ancienne et médiévale* 26 (1959) 300-305; P. Mandonnet, 'La carrière scolaire de Saint Raymond de Peñafort,' *Analecta sacri ordinis fratrum praedicatorum* 14 (1920) 277-280.

¹²⁷ I have used the printed version of the *Summa de casibus* published at Verona in 1744 as well as two glossed manuscript texts, MSS 339 (XIII century) and 266 (XIV century) of the Universitätsbibliothek at Innsbruck. For the definition of the term 'vow' see *Summa* 1.8.1 ed. Verona, p. 54; Innsbruck 339, fol. 20^{ra}): 'Votum est alicuius boni cum deliberatione facta promissio. Si uero fiat de re mala, uel de bona sed sine deliberatione, non obligat. . . .'

¹²⁸ *Summa de casibus* 1.8.1 (ed. Verona, p. 54; Innsbruck 339, fol. 20^{va-vb}): 'Votorum alia necessitatis, alia uoluntatis. Vota necessitatis dicuntur ea, ad quae implenda omnis homo necessario tenetur, siue uoueat siue non, ut abrenunciare diabolo et omnibus pompis eius, tenere fidem catholicam, seruare decalogum, et breuiter omnia alia, sine quibus non est salus, et ad hec se obligat quilibet in baptismo: unde quotiescumque postea peccat mortaliter, est transgressor huiusmodi uoti; ergo tenetur agere penitentiam pro illo peccato, et preterea pro transgressionem. Sed dic quod non est sibi imponenda penitentia tamquam pro diuersis mortalibus, sed tamquam pro uno, ex circumstantiis transgressionis uoti aggravato. . . . Votum uoluntatis dicitur illud bonum ad quod non tenetur aliquis, quia sine illo potest esse salus et tamen sponte obligat se ad illud et postea tenetur: ut uotum continentie, abstinentie, peregrinationis, et similia. . . .'

(*constitutio*) of the Church, as well as an offense against God.¹²⁹ St. Raymond then introduces another set of distinctions, this time between the pure (or absolute) vow and the determined (or conditional) vow.¹³⁰

Having defined the vow and distinguished its various types, St. Raymond then takes up the matter of commutation of vows. Not all vows, he declares, may be commuted, for necessary vows (those on which salvation depends) and the voluntary vow of continence are not subject to commutation.¹³¹ Other voluntary vows, however, may be commuted, as is clear from examples cited in the Old Testament,¹³² provided that two conditions are satisfied: there must be an adequate cause, and the commutation must be approved by a superior authority. To illustrate this point, St. Raymond cites the case

¹²⁹ *Ibid.* (Veron. 54; Innsbr. fol. 20^{vb}): 'Votum autem uoluntatis subdistinguitur, quia aliud priuatum, seu simplex; aliud publicum, seu solemne. . . . Hoc tamen notandum est: quantum ad deum uotum simplex non minus obligat quam solemne et utriusque transgressor peccat mortaliter. . . . Et inter simplex uerbum et iuramentum deus non facit differentiam. . . . Grauius tamen peccat qui frangit solemne et grauior penitentia est sibi imponenda. . . . Quod ergo dicitur "non minus obligat" simplex quam solemne, id est non minori turpi, quia utriusque fractio est mortale, sed alterius maior, et est ratio, quia in fractione uoti solemnis et deum offendit et constitutionem ecclesie et scandalum suscitatur; in alio non sic.'

¹³⁰ *Ibid.* (Veron. 55; Innsbr. fol. 20^{vb}-21^{ra}): 'Alia diuisio uotorum: aliud purum et absolutum, ut sine omni conditione uel determinatione quis emittit uotum continentie uel peregrinationis, uel simile; aliud determinatum aut conditionale, ut cum dicit uouens sic: "uoueo peregrinationem si dominus dederit mihi sanitatem, uel usque ad annum," et similia.'

¹³¹ *Ibid.* 1.8.2 (Verona 55; Innsbr fol. 21^{ra-b}): 'Circa redemptionem uotorum uel commutationem nota quod quedam uota nullo modo possint redimi uel commutari, ut omnia uota necessitatis et de uoluntariis uotum continentie, quia non est commutatio uel dispensatio contra deum. . . . Potest tamen papa uerbum euangelii interpretari . . . ut uerbum "In ore duorum uel trium testium stet omne uerbum" [Matt. 18.16] interpretatur sic: id est, non paucorum: sunt enim plures casus in quibus plures testes requiruntur. Item potest dispensare contra apostolum et omnem hominem quantumcumque sanctum et eorum dicta mutare, nisi in his que illi de fidei articulis dixerunt; uerbi gratia in canone apostolorum precipitur quod presbiter si fuerit fornicatus deponatur. . . . Item uotum continencie ideo non potest immutare, quia uix uel numquam possit melius inueniri in quod fieret commutatio. . . . Hoc tamen uerum est quod si uotum continentie non est sollempnizatum sed simplex licet talis qui sic uouit simpliciter mortaliter peccat matrimonium contrahendo; si tamen contrahat et per uerba de presenti, tenet matrimonium et ipse debet agere penitentiam de fractione uoti. . . .'

¹³² *Ibid.* (Innsbr. fol. 21^{rb}): 'Alia uero uoluntatis uota possunt redimi uel commutari. Cum enim in ueteri legi, in qua non minus preceptum domini obligabat quam uotum hodie in ecclesia, primogenita, que domino mandabantur offerri, quedam domino redderentur, ut primogenita leuitarum, quedam redimerentur, ut aliarum tribuum, quedam commutarentur in aliud, ut asini primogenita, que oue commutabantur [Exod. 13.2, 12-15; 34. 19-20; Num. 3.12-13]: patet quod uotum etiam commutari possit in opus aliud pietatis. Item contra preceptum domini Iosue corporalem mortem Gabaonitarum commutauit in mortem ciuilem, id est in perpetuam seruitutem [Josue 9.15-27].'

of a person who has vowed to go on Crusade. A proper cause for commutation of such a vow might arise from the situation of a person who had made the vow and who was in ill health, or who was a cleric and hence unable to fight, or a poor woman who could not subsidise a company of warriors to go with her, or a person who could not support himself by his own labor. Where one of these conditions was temporary, such as a temporary bout of illness, only a temporary delay in the execution of the vow might be authorized, but where there was a permanent condition of any of these types, then commutation of the vow might be allowed.¹³³ As for the requisite authority for the commutation of a vow, this authority is vested in the bishop for all save the Crusade vow, which is reserved to the pope.¹³⁴ Concerning the costs to be borne in commuting a vow, Raymond cites the norms prescribed in the decretals *Magnae* (X 3.34.7) and *Quod super his* (X 3.34.8), adding that the absolute sum will vary according to the means of the person involved, for a vow which a poor man might redeem with a hundred *solidi* or a single penny, or even with no payment, if he possessed nothing, might not be redeemed by a king or a count for a thousand marks of silver.¹³⁵

¹³³ *Ibid.* (Veron. 56; Innsbr. fol. 21^{rb-va}): 'Nota ergo quod duo exiguntur ad hoc, ut tallium uotorum [*scil.*: uota uoluntaria praeter uotum continentiae] fiat redemptio uel commutatio: causa et superioris auctoritas. Causa, ut si uouens sit senex, debilis, uel infirmus; uel si ex absentia ipsius guerra uel turbatio timeretur in terra; uel si uerisimiliter redemptio uel commutatio melior uideatur et magis accepta Deo quam peregrinatio uel abstinencia; uerbi gratia, emisit aliquis uotum Hierosolymitanum qui non est ibi utilis, cum non possit pugnare propter debilitatem, uel persone conditionem, quia clericus est, nec talis qui suo consilio uel predicatione uideatur ibi utilis, uel mulier, nec potest secum ducere bellatores, quia pauper est, nec est artifex uel agricola qui de laboribus suis possit acquirere necessaria et terre subsidia ministrare, quamuis non multi talium propter breuitatem possessionum et paucitatem inhabitantium ibi sunt opportuni. Item utrum habeant causam temporalem uel perpetuam; ut in primo casu indulgeatur dilatio; in secundo redemptio superioris auctoritate exigitur, quia nemini licet auctoritate propria redimere uel commutare.'

¹³⁴ *Ibid.* (Veron. 56; Innsbr. fol. 21^{va}): 'Est tamen differentia inter uotum terre sancte et alia uota: quia de uoto terre sancte redimendo, commutando, uel differendo nullus potest se intromittere nisi papa uel alius de suo speciali mandato, et hoc sine opinione. In aliis autem redimendis, commutandis, uel differendis licet quidam aliter dixerint et alii dubitauerint, dico quod suus diocesanus episcopus, consideratis causis potest auctoritatem prestare quia expressa est decretalis. . . .'

¹³⁵ *Ibid.* (Veron. 58; Innsbr. fol. 21^{vb-ra}): 'Item in redemptione, seu commutatione debet superior habere considerationem ad facultatem uoventis et expensas quas posset facere uel facturus esset si uotum impleret in eundo, morando, et redeundo, et etiam ad laborem; ut si uotum erat Hierosolymitanum, uel simile, puta contra hereticos, uel aliud tale, omnia sine diminutione transmutat per aliquem, uel per aliquos uiros religiosos in usus et subsidium terre sancte, seu catholicorum pro fide pugnantium totaliter transferendo. . . . In uotis aliarum peregrinationum, puta sancti Jacobi uel similium, dico idem, hoc excepto quod in locum peregrinationis mittat oblationem, quam ibi esset facturus et alias expensas cum compensatione laboris in alia, que magis Deo placere debent, credo, salvo meliori iudi-

Dispensations from vows are treated separately by St. Raymond, who does not appear to take a definite position on the question of whether vows may be dispensed, but simply contents himself with reporting the views of three schools of thought on the matter: Huguccio and his school, who hold that no vows are dispensable and who distinguish dispensation absolutely from commutation; the views of a second group, who hold that only the pilgrimage vow may be dispensed, but not the vow of continence; the view of a third group, who teach that without exception any vow may be dispensed, including the vow of continence, on the theory that every vow contains the implicit and necessary stipulation that it may be voided by superior authority.¹³⁶ The following sections of the *Summa de casibus* relating to vows do little more than to recapitulate the plain sense of the canonistic texts prescribing that monks may not undertake vows without their abbot's permission,¹³⁷ that wives may not take vows without their husbands' consent,¹³⁸ and that by way of exception to the general rule concerning the vows of married persons, husbands may undertake the Crusade vow without their wives' permission.¹³⁹

cio, convertendas. . . . In uoto abstinentie habenda est ratio asperitatis jejuniorum panis et aque et omnium aliorum que in uoto fuerunt comprehensa; considerari etiam debet affluentia uouentis. . . . Nam in eadem specie uoti aliquis pauper posset redimere cum centum solidis, uel etiam uno denario, uel nullo, si nihil haberet uel habere potest, ubi rex uel comes non posset cum mille marchis argenti.'

¹³⁶ *Ibid.* 1.8.9 (Veron. 66-67): 'Sequitur uidere, an in uotis ualeat dispensari? Circa quod tres inueniuntur opiniones. Quidam dicunt simpliciter quod nec etiam papa potest in uotis dispensare, quia redditio uoti est de jure naturali siue diuino, circa quod non dispensatur. . . . Hoc tenet Hugot. et ejus sequaces. Et si opponatur eis de redemptione, uel commutatione uotorum . . . respondent quod non est ibi dispensatio, sed juris declaratio, cum enim quis uouet peregrinari uel abstinere, subintelligitur "si commode fieri potest." . . . Alii dicunt, quod potest dispensare in uotis peregrinationis, sed non in uoto continentie. Tertii dicunt sine exceptione quod in omni uoto uoluntatis <papa> potest dispensare, siue sit de continentia, siue de alio: in omnibus uotis et juramentis intelligitur "excepta ejus auctoritate." . . . '

¹³⁷ *Ibid.* 1.8.4. (Veron. 59-60): 'Potestate uero superioris multipliciter potest irritari uotum: sunt enim quaedam persone que non habent liberam facultatem uouendi, ut monachus non potest facere uotum abstinentie uel peregrinationis uel aliquod aliud, et si fecerit non debet exsequi sine licentia abbatis, ne super eum fratres scandalizentur, si eorum consuetudinem generalem singularis uoluerit excedere, uel ne detur ei occasio euagandi. . . . '

¹³⁸ *Ibid.* 1.8.7 (Veron. 64): 'Item uxores si emisierint uotum abstinentie uel peregrinationis uel continentie uel aliquod aliud, non debent auctoritate sua contrauenire, sed uiri earum possunt irritare, etiamsi ante matrimonium contractum emisierant uotum, quod contracto matrimonio nondum compleuerant. Verum est etiam hoc si uxor de consensu uiri emiserat tale uotum et postea prohibeat, quia debet ei obedire uxor et nullomodo peccat uxor obediendo, licet peccet uir id <in> quod consenserat prohibendo . . . '

¹³⁹ *Ibid.* 1.8.8 (Veron. 66; Innsbr fol. 24^{ra}): 'In uoto peregrinationis dic quod neuter conjugum potest altero inuito facere. . . . Fallit in uoto Hierosolymitano, quod in maximum fauorem terre sancte ac fidei christiane potest uir sine uxoris licentia facere ac libere adimplere; uxor tamen ut consentiat est attentius commonenda. . . . '

Another mid-thirteenth-century canonistic treatise which deals with the matter of dispensing from vows is the *Notabilia 'Aliter debet'*, found in a unique manuscript of Gonville and Caius College, Cambridge.¹⁴⁰ There are several points of interest in this brief treatment. One is the emphasis which is placed on the distinction between the Holy Land vow taken for piety's sake (*ex devotione*) and the vow taken to aid the Holy Land (*pro subsidio*), which is the Crusade vow properly speaking.¹⁴¹ The distinction of the two sorts of vow, although latent in some of the decretals (especially in *Quod super his*, which distinguishes the vow for defence of the Holy Land from the penitential pilgrimage vow), seems not to have been made quite so explicitly in any earlier source. The terminology of 'Aliter debet' becomes the normal usage of the later discussions of the Holy Land vow. Further, the author of 'Aliter debet' takes an unusual position when he insists, unlike almost all of the other canonists of his period, that there is no distinction between the granting of a dispensation from a vow and a commutation of votive obligations.¹⁴² Again, without noting any argument on the point, 'Aliter debet' denies the inference, sometimes drawn from *Ex multa*, that the Crusade vow is greater than the vow of continence, since the former enjoys privileges which the latter does not share.¹⁴³

The matter of the pilgrimage vows of married persons is discussed at length by Bartholomaeus Brixienensis († 1258) in his *Questiones dominicales* (written between 1227 and 1234; revised after 1235).¹⁴⁴ Although the question posed for his disputation does not concern the Crusade vow directly, Bartholomaeus took the opportunity to discuss in some detail the workings and the rationale of the general rule that married persons may not take a vow, or fulfill an earlier pilgrimage vow, save by mutual consent. The obvious and basic reason for the rule, he points out, is the preservation of marital chastity. If a husband were to make a vow of continence without his wife's consent, Bartholomaeus held, this would have the effect of granting her a license for fornication and the fault would ultimately rest upon the husband, who created the situation.

¹⁴⁰ Kuttner, *Repertorium* 414 n. 1.

¹⁴¹ *Notabilia 'Aliter debet'* to X 3.34.6 (Gonville and Caius MS 23/12, fol. 41^{ra}): 'Item prosequere differentiam inter illos qui vovent pro subsidio vel ex devotione.'

¹⁴² *Ibid.* to 3.34.1 (fol. 41^{ra}): 'Nota quod ex quo scribitur episcopo intelligitur quod quilibet episcopus potest peregrinationis votum commutar<e>, excepto vltamarino et omne votum commutare excepta continencia, vel dispensari potest; nec est differentia inter commutare et dispensar<e>, licet eam aliqui faciant.'

¹⁴³ *Ibid.* to 3.34.9 (fol. 41^{rb}): 'Non sequitur quod votum ultramarinum sit maius continencia, quia uxor ipsum potest emittere invito viro et econtra.'

¹⁴⁴ Schulte, *Geschichte der Quellen* 2.83-88; Gabriel Le Bras, 'Bartholomaeus Brixienis,' DDC 2.216-217. The date has been established by Gérard Fransen, 'Tribunaux ecclésiastiques et langue vulgaire d'après les *questiones* des canonistes,' *Ephemerides theologicae Lovanienses* 40 (1964) 409.

Further he adduces the theological argument that a married man has no power over his own body, but rather by the marriage contract has transferred his rights to his wife. By analogy, then, fulfilment of the vow to undertake a lengthy pilgrimage would have the same effect as a vow of continence or abstinence from sexual relations, inasmuch as it would effectively deprive the non-consenting partner of the right to intercourse for a lengthy period of time. Hence Bartholomaeus concluded that the general rule prohibiting the fulfilment of pilgrimage vows of married persons without the consent of the partner rested upon a sound basis. He adds, without however attempting to find any other rationalization for his position save a citation of the decretal *Ex multa*, that the general rule is abrogated when it is a matter of a Crusade vow.¹⁴⁵

There are some points of interest, too, in the discussion of the title *De voto* in the *Apparatus* (finished in or shortly before 1251) of Pope Innocent IV (1243-1254).¹⁴⁶ Innocent adds weight to what was in his day becoming the

¹⁴⁵ Bartholomaeus Brixiensis, *Questiones dominicales*, q. 40 (Lambeth Palace Library, MS 39, fol. 42^{rb-vb}, and BM MS Arundel 435, fol. 231^{vb}-232^{ra}): 'Quidam fecit uotum eundi ad sanctum iacobum; postea contraxit matrimonium cum aliqua; qui cum uellet peregrinari, uxor eius contradicit, se dicens continere non posse. Queri solet an inuita uxore peregrinari possit? PRO. Quod possit probo, nam licet uotum ab inicio sit uoluntarium, postquam tamen factum est debet necessitate adimpleri. . . . Scriptum est enim, "uouete et reddite domino deo uestro." . . . Item est obligatus . . . deo . . . tandem uxori; ergo magis debuit deo quam homini obediri. . . . Item uxor subiecta debet esse marito et nullam habet auctoritatem . . . preterea cum uir sit caput mulieris, contra legem dei uxor ei imperare non potest. . . . Item iste antequam contraheret cum uxore matrimonium, deo fuerat prius obligatus . . . preterea in iuramento et uoto excepta intelligitur maior potestas . . . multo forcius in aliquo contractu intelligitur excepta maior potestas. Item iste lege dei ducitur, ergo lege alia astringi non debet . . . nam monachus qui ex toto abbati suo subicitur, si uitam cupit ducere arctiorem hoc posset facere contradicente abbate suo, cum lege priuata ducatur que publice preiudicat . . . Sequatur ergo hec mulier uirum suum si se continere non potest. . . . Item, secundum ius ciuile tenetur quis ad uotum complendum. . . . Respondeo CONTRA. Contrarium probo, nam si maritus abstinet sine uoluntate uxoris, ei prebet licenciam fornicandi et peccatum illius imputatur marito. . . . Item per continenciam mariti illa non debet fornicaria fieri, cum dicitur cum lucro tali tale dampnum uoluit compensare. . . . Non enim recipitur apud deum conuersio uiri cuius sequitur coniugalis federis prosti-tutio. . . . Item uir non habet potestatem sui corporis, sed mulier . . . ergo sine licencia eius non potuit uir peregrinari; preterea expresse dicit c. quod uotum ante contractum matrimonium emissum altero inuito adimpleri non potest, . . . immo uotum ante emissum frangitur per matrimonium quia forcius uinculum superuenit. . . . Item clericus preter licenciam episcopi peregrinari non potest, quia potestatem habet in ipsum . . . nec monachus inuito suo abbate. . . . Nec debet mulier priuari iure suo sine culpa sua cum simpliciter nupsit . . . nec debet uagari per orbem. . . . SOLUCIO. Solucio: credo quod uotum adimplere non possit uir sine uoluntate uxoris . . . nisi uellet ire in subsidium terre sancte. . . .'

(Some of the argument, being of uncertain reading, has been omitted here.)

¹⁴⁶ Schulte, *Geschichte der Quellen* 2.91-94; Charles Lefebvre, 'Sinibald de Fieschi,' DDC 7.1029-1062.

increasingly common opinion of the canonists by teaching that any vow save the vow of continence might be dispensed or commuted.¹⁴⁷ Even more significantly he denied that there was any real difference between commutation and dispensation: for, he argued, no commutation is possible without dispensation from the original terms of the vow which is commuted, and hence he concluded that the effort to distinguish between these two methods of escaping votive obligations was unrealistic.¹⁴⁸ Further, in his unusually thorough discussion of the heritability of votive obligations, Innocent dwelt at length upon the distinction, already found in 'Aliter debet,' between vows made in order to aid the Holy Land and those made for devotional reasons alone. Both types of vows, he held, create obligations (a position which he bolstered with an argument by analogy from the Roman law of promissory obligations) whose fulfillment may be required of an heir.¹⁴⁹ Innocent also held, as did the other decretalists, that, in virtue of the privilege granted by the decretal *Ex multa*, the Crusade vow might be taken by husband or wife without the consent of the other,¹⁵⁰ and subscribed to the somewhat less common view that bishops

¹⁴⁷ Innocent IV, *Apparatus* to X 3.34.1, v. *dispensare* (ed. Lyons 1540, fol. 164²; ed. Frankfurt 1570, fol. 428^v): 'In omne voto, siue sit in faciendo, siue in non faciendo, dispensari potest, vel potius compensari, etiam si solenniter vouerit, vel commutari, dummodo iusta subsit causa et superioris auctoritas interuenerit, et melior sit compensatio, quia aliter non tenet. . . . In voto tamen continentiae speciale est, quia in eo nullus dispensare potest. . . .'

¹⁴⁸ *Ibid.*: 'Aliqui tamen dicunt quod in votis non potest dispensari, sed possunt commutari, sed hanc differentiam non videmus, cum commutatio non fiat sine dispensatione.'

¹⁴⁹ *Ibid.* to 3.34.6, v. *et hoc* (Lyons fol. 164^v; Frankfurt fol. 429^v): 'Hoc est licitum et debitum vbi per se nullo modo potest exequi, sed si per se exequi posset, licet inutiliter, scilicet quia esset claudus vel alias mutilatus, tunc si non ad subsidium sed ad deuotionem tantum, scilicet vt videret terram sanctam vouisset, ire personaliter deberet, et modo si propter subsidium vouisset, si est talis, quod suum defectum possit supplere per alios, quia secum ducere potest; sed in vtroque casu admittitur compensatio. . . . Hanc tamen assignamus differentiam inter eos qui vouent pro subsidio, et eos qui vouent pro deuotione, quia primi morbo vel alio impedimento detenti, coguntur alijs committere quod eorum votum compleant. Argumentum hic immo plus videtur, quia si alijs non committant, tamen haeredes compelli possunt vt vel ipsi compleant votum patris, vel expensas et subsidium quod pater vel testator facturum erat ipsi facient, nam vouisse intelligitur subsidium terrae sanctae, siue per se siue per alium faciendum, vnde ad illud compellendi sunt haeredes, cum ex nudo voto obligatio nascatur, ff. de pollicitationibus l. 2 in prin. [*Dig.* 50.12.2 pr.] et nuda promissio facta ciuitati obligat, ff. de pollicitationibus, pactum [*Dig.* 50.12.3 pr.]; multo fortius facta Deo vel subsidio terrae sanctae. . . . In secundo autem casu, scilicet quando propter deuotionem videndi terram vel alias vouit, non credimus quod mittere teneatur si iusto impedimento personaliter ire impediatur, propter conditionem generalem quae subintelligitur, scilicet, "si potero," vt supra dictum est.'

¹⁵⁰ *Ibid.* to 3.34.4 (Lyons fol. 164^v; Frankfurt fol. 429^r): 'Excipimus votum peregrinationis vltamarine, quod viri vel mulieres, si sunt potentes, possunt facere altero inuito . . . sed non vouens potest alium sequi. . . .'

might undertake the Holy Land pilgrimage without papal consent, even though they required papal permission for all other pilgrimage vows.¹⁵¹

A particularly lengthy and important treatment of the vow in general and the Crusade vow in particular is that of Henry of Susa, Cardinal bishop of Ostia, more commonly known as Hostiensis († 1271).¹⁵² Hostiensis defines the vow as a deliberate promise made to God to do or not to do some permitted act. The terms of the definition are so constructed as to exclude the possibility of a vow to perform an illicit act. The meaning of Hostiensis' explanation of this construction seems to be that no votive obligation can arise from a promise to perform an illicit act and hence that such a promise may not be considered a vow, or, in other words, the vow is defined by the obligations arising from it. So far as pseudo-vows to perform illicit acts are concerned, Hostiensis adds, transgressors are more pleasing to God than observers, even if they have sworn an oath on the matter.¹⁵³ Anyone at all, according to Hostiensis, is free to take a vow as thus defined, despite any contrary obligation, for those who are moved by the spirit of God are not subject to the public law, which includes even the canon law. The vow, then, is a subject of the private law — the law written by the Holy Spirit in the heart — which is the final law, not subject to the regulation of public law: for where the spirit is, there also is freedom.¹⁵⁴ This remarkable passage extends to vows in general a famous text of Urban II in Gratian's *Decretum* (C.19 q.2 c.2) in which the di-

¹⁵¹ *Ibid.* 'Clericus autem secularis potest vouere continentiam, sed non peregrinationem sine licentia praelati. . . . Episcopus autem sine speciali licentia Papae non potest votum peregrinationis vel religionis emittere . . . licet transmarino forsan excepto. . . .'

¹⁵² Schulte, *Geschichte der Quellen* 2.123-130; C. Lefebvre, 'Hostiensis,' DDC 5. 1211-1227; Gabriel Le Bras, 'Théologie et droit romain dans l'œuvre d'Henri de Suse,' *Études historiques dédiées à la mémoire de Noël Didier* (Paris 1960) 195-204; Noël Didier himself wrote three important biographical articles concerning Hostiensis: 'Henri de Suse, prieur d'Antibes, prévôt de Grasse (1235 ? 1245),' *Studia Gratiana* 2 (1953) 595-618; 'Henri de Suse, évêque de Sisteron (1244-1250),' *Revue historique de droit français et étranger*, 4th series 31 (1953) 244-270, 409-429; and 'Henri de Suse en Angleterre (1236 ?-1244),' *Studi in onore di Vincenzo Arangio-Ruiz* (4 vols. Napoli 1953) 2.333-351.

¹⁵³ Hostiensis, *Summa aurea*, tit. *De voto* (ed. Venice 1605, col. 1125; ed. Lyons 1537, fol. 176^{rb}): 'Quid sit votum? Alicuius rei licite faciendae, vel non faciendae, cum deliberatione animi Deo facta pollicitatio. Bene dico rei licite, quia si mala vel illicita esset promissio, non esset servanda, licet rescindenda: nam in malis promissis rescinde fidem, in turpe voto muta decretum . . . et in talibus magis placent Deo transgressores quam observatores, etiamsi intervenerit iuramentum. . . .'

¹⁵⁴ *Ibid.* (Venice col. 1129; Lyons fol. 176^{vb}): 'Quis vovere possit? Quilibet regulatiter nullo iugo obstante: Quia qui spiritu Dei ducitur, non est sub lege, scilicet publica, et dicitur lex publica lex canonica; verbi gratia, decretum est in canone, ne clericus de suo episcopatu ad aliam transeat sine litteris commenaticijs, privata vero lex est illa quae instinctu sancti in corde scribitur et haec est lex ultima, non est sub prima: quia ubi spiritus, spiritus ibi libertas, 19.q.2. duae sunt.'

chotomy *lex privata* — *lex publica* is invoked to stress the freedom of secular priests to choose the religious state. From this splendid position, however, Hostiensis beats a quick retreat, as he goes on to qualify what he has just said by instancing certain categories of persons who do not enjoy a complete free will and hence are subject to certain limitations upon their right to make vows. These categories are: bishops, clerics, monks, minors, married women, and serfs.¹⁵⁵ Hostiensis' discussion of the limitations upon the power of these groups to make vows largely repeats and summarizes the positions taken by his predecessors, although his treatment contains a few original points of interest. The limitation upon a bishop's right to make a pilgrimage or other vow is linked by Hostiensis to the symbolic marriage bond which exists between a bishop and his diocese. While he does not press this analogy so far as to suggest that a bishop requires the permission of his diocese in order to take a vow which would separate him from it, Hostiensis does found the requirement that bishops secure a special or general licence from the pope before undertaking a pilgrimage upon the existence of a quasi-matrimonial tie between the bishop and his see.¹⁵⁶ The disability of clerics is based upon the obedience due to their bishops,¹⁵⁷ that of monks upon both obedience and the premise that their departure upon pilgrimage might cause scandal and give occasion for aimless wandering, which is foreign to the monastic vocation.¹⁵⁸ Serfs and minors are excepted from the general rule that vows may freely be taken by all, according to Hostiensis' reasoning, because of the *patria potestas* which their masters and fathers hold over them.¹⁵⁹

¹⁵⁵ *Ibid.*: 'Prohibentur autem quaedam personae quae quo ad votum emittendum non habent liberam voluntatem, sicut episcopus, clericus, monachus, impubes, uxor, servus.'

¹⁵⁶ *Ibid.*: 'Episcopus non potest aliquod votum emittere sine licentia papae: intelligas per quod dissolvatur vinculum matrimonij: quod esse intelligitur inter ipsum et ecclesiam, sponsam suam. . . . unde nec potest votum emittere peregrinationis, per quod ipsum ab ecclesia oporteat absentare, sine licentia speciali, vel generali. . . .'

¹⁵⁷ *Ibid.* (Venice col. 1129; Lyons fol. 177^{ra}): 'Clericus etiam non potest sine licentia praelati sui votum peregrinationis emittere . . . nec aliud, per quod relinquere oporteat ipsum ecclesiam suam.'

¹⁵⁸ *Ibid.* (Venice col. 1130; Lyons fol. 177^{3a}): 'Item nec votum abstinence singularis potest emittere monachus, neque peregrinationis, neque aliquod regulariter et si hoc fecerit sine licentia abbatis non debet exequi, ne fit fratrum scandalum, quibus se debet conformare: vel ne detur ei occasio vagandi. . . . Quid si votum emisit, antequam monasterium intraret? Dicas idem scilicet quod sine licentia abbatis ipsum exequi non debet. . . . Nam et omnia temporalia vota videntur mutasse in religionis observationem . . . nec est necessaria circa peccati satisfactionem: ubi totum vitae tempus servitio impenditur conditoris.'

¹⁵⁹ *Ibid.* (Venice col. 1131, 1133; Lyons fol. 177^{ra-rb}): 'Sed nunquid votum peregrinationis longinquae emittere potest [*scil.* filius familias]? Non videtur, quia nimis praeiudicaret patriae potestati, cui non debet praeiudicare, ut dictum est . . . excipe peregrinationem voti transmarini . . . Quid de voto peregrinationis a servo facto? Dicas quod invito domino non potest ipsum exequi, nisi quando necessaria est . . . et iunge alia quae not. in filio fami-

To all of these cases, however, Hostiensis admits the general exception of the Crusade vow, which may be taken under any circumstances without the prior permission of another. The similar exception concerning the vows of married persons is readily admitted by Hostiensis with respect to married men. As to married women, however, he is more doubtful and discusses their position at great length. His doubts as to the desirability of wives executing the Crusade vow arose from the thought that their chastity might be endangered on the long, unpredictable journey. A woman who wished to go alone on Crusade Hostiensis regarded as a suspicious person, whose virtue might well be too frail to withstand the rigors and temptations of the journey. Rather smugly he quotes Ovid's unchivalrous line:

Casta est quam nemo rogavit.

Accordingly, he counseled that young women or those whose character was suspect were not to fulfill Crusade vows in person, but were rather to redeem them. Elderly women, however, and matrons of good reputation might be advised to make the journey in person, so long as they brought with them a company of soldiers whose services might be of value to the Holy Land.¹⁶⁰ With quasi-seriousness, too, he discusses the canonical position of a harlot who has vowed to go on Crusade. Should she be allowed to redeem her vow? She would after all be followed by a multitude of warriors! Alas, he concludes that neither the fulfillment of her vow nor the redemption of it would be licit. The former he rules out because her warriors would be participating in the

lias supra eodem . . . et quod ibi dictum est quo ad filium familias, hic [ed. hanc] quoque ad servum intelligatur repetitum, cum fortius quam patri filius et servus domino sit astrictus.' For *patria potestas* see Buckland, *Textbook of Roman Law* (n. 61 *supra*) 101-134; Girard, *Manuel élémentaire* 147-207; R. W. Leage, *Roman Private Law* (2d ed. London 1951) 80-96.

¹⁶⁰ Hostiensis, *loc. cit.* (ed. Venice col. 1132; ed. Lyons fol. 177^{rb}): 'Nunquid ergo et uxor potest Hierosolymitanum votum viro invito emittere? De hoc nihil dicitur expresse et videtur quod sic, quia non ad imparia iudicantur . . . ; quid enim dices, si sit nobilis mulier habens magnum comitatum, nec viro suo indotem datum, quam multi bellatores sequentur? Certe necessitati terrae sanctae subveniendum erit et tunc ea ratio videtur, quae in viro est. . . . Sed contra, quia vir caput est mulieris . . . et unde et in vita et in morte debet sequi virum, non vir ipsam. . . . Si enim vult ire sine viro, suspecta est mihi quia fragilis est, et sic dicit Ovidius: "Casta est quam nemo rogavit." Subtrahenda est ergo vagandi materia et timendum, ne angelus se transformet . . . Nec obstat infra eod. Quod super his infine (X 3.34.8) quod enim dicit ibi "de mulieribus," aut intelligas: quae non voverunt; et quod sequitur, "caeterae vero," expone: quae non habent viros et voverunt, vel quae de consensu maritorum voverunt. Solutio: Puto quod votum potest emittere, etiam viro invito. Utrum autem ipsum possit exequi eo invito, distinguendum videtur utrum suspecta sit et infamata, vel nimis iuvenis, in quo casu personaliter non exequetur, et sic intellige iura. . . . Si vero sit vetus quae multum profecit in diebus suis, et matrona bonae famae, vadat, nec votum redimat, si secum multos possit ducere bellatores. . . .'

Crusade for a morally inadmissible reason; the latter is rejected because of the source of the funds which would be employed to redeem the vow.¹⁶¹

In his discussion of the nature of vows, Hostiensis emphasizes, as the decretists had, the quality of *deliberatio* as a necessary precondition of a binding vow.¹⁶² He follows closely — at times, verbatim — St. Raymond de Peña-fort's scheme of distinctions between the various types of vow — necessary and voluntary, simple and solemn, pure and conditional.¹⁶³ As for the commutation of vows, especially pilgrimage vows, Hostiensis repeats the general norms laid down in Innocent III's decretal *Magnae* (X 3.34.7) for arriving at the sum to be demanded and the factors — equity, honesty, and utility — which are to be taken into account in dealing with such cases.¹⁶⁴ His treatment of the rules for commuting Crusade vows in particular is more ample and clear-cut than that of most of his predecessors. Hostiensis makes use of the distinction between the two types of Holy Land vow — devotional and militant — and draws from them two distinct sets of rules for commutation. In brief,

¹⁶¹ *Ibid.* (Venice col. 1132-1133; Lyons fol. 177^{rb}): 'Quid si publica meretrix quam multi sequuntur, quia nihil amore vehementius, . . . votum emisit transmarinum, numquid poterit votum redimere? Non videtur: quia multi bellatores eam sequuntur. . . . Dicas quod nisi corrigatur, nec ipsa nec bellatores sui qui ex corrupto amore sequuntur ipsam admittendi sunt, neque votum suum comprobandum, quia nec oblatio sua recipienda est . . .'

¹⁶² *Ibid.* (Lyons fol. 176^{rb}): 'Cum deliberatione animi ideo dictum est quia votum quod ex facilitate animi potius quam ex arbitrio discretionis emissum est non est obligatorium.'

¹⁶³ *Ibid.* (Venice fol. 1126; Lyons fol. 176^{rb-vb}): 'Quot sint species votorum? Duae, nam aliud necessitatis, aliud voluntatis. Votum necessitatis dicitur illud, quod quis promittit in baptismo, vt abrenunciare satanae et pompis eius, tenere fidem, servare decalogum, et alia sine quibus salus non est . . . unde cum homo peccat post baptismum, dupliciter reus est: et quia peccat in eo quod comittit, et quia votum praevaricaretur, non tamen tanquam pro duobus mortalibus poenitentiam inducit, sed tanquam pro uno circumstantia transgressionis aggravato. Votum vero voluntatis dicitur quod quis voluntarie emittit, et ad quod quis ante votum non tenebatur, sed post votum astringitur, sicut et votum continentiae, abstinentiae, pregrinationis. . . . Votorum autem voluntariorum aliud simplex aliud solemne. Simplex votum dicitur quia simpliciter et sine aliqua solemnitate emittitur et horum aliud consistit in faciendo, vt ire ad sanctum Jacobum, ieiunare, orare, offerre certis temporibus et horis quibus homo non astringitur; aliud in non faciendo, sicut non contrahere matrimonium, non recipere ordines; hec etiam dicuntur voluntaria, quia sine his salus est. . . . Sed etiam votorum aliud purum, vt cum simpliciter emittitur, aliud conditionale, vt cum conditio apponitur, puta cum dicitur "volo ieiunare vel limina talis sancti visitare si deus michi prestiterit sanitatem, vel filium, vel filiam michi concesserit." Cf. nn. 128-130 *supra*.

¹⁶⁴ Hostiensis *loc. cit.* (Venice col. 1135-1136; Lyons fol. 177^{va}): 'In voto etiam peregrinationis sic facienda est redemptio ut expensae quae fierent in eundo, morando, et redeundo, ad alias pias causas erogentur, et ut labor itineris ieiuniorum et vigiliarum, et orationum laboribus compensentur. . . . Sed in redemptione vel commutatione cuiuslibet voti tria sunt praecipue attendenda; quid liceat secundum aequitatem, quid deceat secundum honestatem, quid expediat secundum utilitatem seu necessitatem. . . .'

his position is that those who have made the devotional vow are not to be allowed a commutation so long as they are able to make the journey, while commutation is to be granted readily to those who have made the militant vow and who are unable to fight, either in person, or through others, or indirectly by giving advice, counsel, and exhortation. Likewise, Hostiensis stresses as a factor in determining the granting of a commutation the probable effects of the absence of the *vovens* from his home. If his absence on Crusade would occasion any danger to his land or province, he should be allowed to postpone or forego the personal fulfillment of the vow.¹⁶⁵

In this treatment of the jurisdiction over vows and their commutation, Hostiensis acknowledges the power of the bishop to deal with all voluntary vows save the Crusade vow and the vow of chastity,¹⁶⁶ over which the pope's exclusive jurisdiction is acknowledged. The papal dispensing power is defined as extending to all vows, save possibly the vow of chastity, upon which opinions differ, according to Hostiensis. He reports, however, that certain canonists and Cardinal Hugh of St. Cher held in principle that the pope might dispense even from the vow of chastity, although the circumstances under

¹⁶⁵ *Ibid.* 'Sed et in voto transmarino est consideranda voventis intentio, utrum scilicet intenderet peregrinari vel bellare, ut in primo casu habilis ad eundum quamvis inhabilis ad pugnandum non redimat, inhabilis vero ad eundum redimat; in secundo casu inhabilis ad pugnandum quamvis habilis ad eundum redimat, nisi consilio strenuus sit, vel secum forte possit ducere magnum numerum pugnatorum. Talis enim est omnino impotens, cum primus lingua, secundus per alios pugnare possit . . . vel nisi sit agricola, vel artifex qui ibi sit utilis quamvis non multi talium propter brevitatem possessionum et paucitatem inhabitantium ibi, sunt opportuni. . . . Sed inter illos, qui habent impedimentum temporale, ut his dilatio concedatur, et perpetuum, ut ab his recipiatur redemptio, est subtiliter distinguendum. . . . In clericis etiam voventibus considerare oportet utrum clericus cruce signatus consilio vel officio praedicationis, vel quia servitio alicuius magnatis deputatus est, vel quia secum multo bellatores potest ducere, sit sibi utilis vel necessarius: et tunc non recipietur redemptio, vel non sit sibi opportunus et tunc recipietur. . . . Nam quo ad pugnam personaliter faciendam inhabilis est . . . nisi forte spiritualiter pugnare velit armis suis, quae sunt orationes et lachrymae . . . Sed et aliquoties potest votum redimere, etiamsi bellatores ducere possit, puta si sit nimis senex, fragilis, et confractus. . . . Item oportet considerari utrum ex facilitate animi iuvenis votum emissum est, et sic est remittendum redemptione competenti recepta. . . . Si tamen propter absentiam unius personae totius terrae, sive provinciae unius periculum immineret, votum remittitur vel differtur; nec est voti transgressor, qui autoritate Sedis Apostolicae illud distulit adimplere. . . .'

¹⁶⁶ *Ibid.* (Venice col. 1136-1137; Lyons fol. 177^{va-vb}): 'Sic patet, quod autoritate episcopi potest quodlibet votum voluntarium commutari, vel redimi, excepto transmarino quod soli Papae reservatur. . . . Item in omni voto voluntatis redimendo, vel commutando autoritas Papae sufficit, nullo casu excepto. Episcopi etiam autoritas in omnibus sufficit exceptis duobus, scilicet voto crucis . . . et continentiae, quod soli Papae relinquendum est . . .'

which Hostiensis conceived of the power being exercised were, to say the least, somewhat remote.¹⁶⁷

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The work of Hostiensis may for most purposes be taken to mark the end of the substantial development of the doctrine of vows and in particular of the Crusade vow by the medieval canonists, as Villey has suggested.¹⁶⁸ Although much was written on the subject by the later medieval canonists, none of them — not even such eminent and talented writers as Joannes Andreae and Guillelmus Durandus — had any very significant new insights or developments to add to the doctrines created by their predecessors in this area. That this should be so is not particularly surprising, at least so far as the Crusade vow is concerned, for after the period of Hostiensis' work the Crusade itself rapidly waned in importance in European political and religious life. This is not to say, of course, that the idea of the Crusade vanishes from the scene. On the contrary, new Crusade expeditions continue to be proclaimed and planned for throughout the fourteenth and fifteenth centuries and a handful of ill-fated Crusade expeditions even took the field. Nonetheless, the Crusade as a viable and significant mode of political action was finished by the mid-fourteenth century.

As the foregoing discussion has made apparent, the whole development of the canonistic theory of vows parallels rather closely the growth, maturation, and senescence of the Crusading idea. This is not to say that there is any necessary causal relationship here, since in the same period the whole canonistic system was undergoing a revolutionary change for reasons which are largely unrelated to the Crusade at all. Nevertheless the coincidence in time does suggest rather strongly that the development of the use of the vow in the Crusade may not be entirely unrelated to the course and direction which the elaboration of canonistic doctrine concerning vows took in the twelfth and thirteenth centuries.

The canonists begin to organize a hitherto inchoate group of notions about vows (as about many other things) at almost precisely the same time as the Crusade movement begins, which is to say at the end of the eleventh and the beginning of the twelfth century. Although prior to the time of Ivo of Chartres the vow had had a long history as a religious institution, there is no evid-

¹⁶⁷ *Ibid.*: 'Ideoque nec summus Pontifex potest contra hoc [*scil.*: votum continentiae et castitatis] dispensare . . . alij contra, intra quos est do. Hug. Card. Sanctae Sabinae, et dicunt quod dominus Papa posset ex magna causa dispensare in hoc, puta, si aliquis rex Saracenorum cum tota terra sua offeret conversionem suam, si aliqua sanctimonialis daretur sibi in uxorem, et hi probabilius dicunt.'

¹⁶⁸ M. Villey, 'L'idée de la croisade' (note 1 *supra*) 567.

ence that any coherent theory of votive obligations or any significant analysis of the vow had ever previously been accepted in the Western Church. In the work of Ivo we find the first beginning of an effort to gather and to try to make some pattern out of the earlier references to vows in the work of the Fathers and of earlier popes and councils. What Ivo and, even more strikingly, Gratian, writing a generation later, contributed to the development of this doctrine is essentially the revival of the Roman Law concept of votive obligations, together with the beginning of an effort to analyze the vow-making process, in order to determine the degrees of moral and legal obligation which are assumed at the successive stages of the process. In their work, too, we find assembled, though not rigorously analyzed or defined, the rudimentary elements of a system whereby votive obligations might be modified or even avoided altogether. Perhaps Gratian's most original contribution to this development was his introduction of some loosely conceived juridical distinctions between various types of vows.

The process of legal analysis and development of a doctrine of vows, as we have already seen, was left at a comparatively primitive stage in the *Decretum* of Gratian. During the following century, the growth of the theory of vows proceeded rapidly, both in the canonistic commentaries of the decretists (especially Rufinus, Huguccio, and Joannes Faventinus) and in the spate of new papal legislation, which began in the pontificate of Alexander III and which (so far as the vow is concerned) effectively ended with the pontificate of Gregory IX. Of the important changes and developments in the doctrine of vows in the decretals and the decretalist literature, we may single out four matters which seem particularly important: (1) the revival by Innocent III of the Roman Law concept of the heritability of votive obligations; (2) the differentiation of the Crusade vow in particular as the subject of special privileges and rules; (3) the spelling out of an ordered and rational system for modifying, and escaping from, votive obligations, and (4) the clarification of the means for legal enforcement of votive obligations *in foro externo*.

Lastly, it may be noted that the development of the doctrine of vows in general and of the Crusade vow in particular, as described here, is much more a matter of slow and gradual growth than has previously been thought. Without denying that the work of Raymond de Peñafort, of Innocent IV, and of Hostiensis on this matter was important, it seems scarcely justifiable to conclude, in view of the evidence reviewed here, that the canonistic theory of the Crusade, at least so far as the Crusade vow was concerned, came almost instantaneously into being in the work of Innocent IV and Hostiensis, as Villey thought.¹⁶⁹ Rather, the canonistic doctrine of the Crusade vow is part

¹⁶⁹ Villey *loc. cit.* 'Mais c'est avec l'apparatus d'Innocent IV, en 1245, la somme d'Hostiensis et son grand commentaire littéral ou *Lectura* (1253 et 1268), les trois œuvres sans

and parcel of the growth over a period of some two centuries of a set of coherent doctrinal theories concerning vows of all kinds. The Crusade vow is only marked off from other vows rather late in the development of the doctrinal structure and, even then, the differentiation of the Crusade vow from other vows is confined to a relatively small number of specific matters which collectively constituted a set of privileges for those who made that vow.

doute les plus marquantes de la littérature canonique médiévale, que la théorie juridique de la croisade apparaît soudain constituée.' Villey was even more emphatic in his appreciation of Hostiensis as 'the father of the juridical theory of the Crusade' in his earlier book, *La croisade*, pp. 256-257. For his treatment of the Crusade vow in particular, see 'L'idée' 581-586 and *La croisade* 124-127.

VII

‘CRUCE SIGNARI’: THE RITE FOR TAKING THE CROSS IN ENGLAND*

A Crusader, both etymologically and historically, was a person who had ‘taken the Cross.’ The symbolic act of taking the Cross was practiced routinely from 1095 onward by all those who had made a vow to participate in the expeditions to the Holy Land and elsewhere which were proclaimed, sanctioned, and indulgenced by the papacy. In the eyes of the canonists, when they came to analyse the institutions of the Crusade, the formal taking of the Cross was viewed as a ceremony which solemnized the vow by which the Crusader bound himself, both morally and legally, to serve in the ranks of the Crusade.¹

The practice of affixing a Cross to the clothing as an external symbol of the Crusader’s status originated at the Council of Clermont, where Pope Urban II proclaimed the first crusade in November 1095. The accounts of that Council agree that this practice was commanded by the pope, but none of the early accounts specify any formal ceremony for the act of taking the Cross.² The implication is, rather, that those who had bound themselves

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¹ Thus Laurentius Hispanus († 1248) cites a gloss of Cardinalis († 1197) in his *Apparatus* to *Compilatio Tertia*, 3.26.2 (= *Decretales Gregorii IX* 3.34.6 *Licet*) ad v. *sollemniter*: ‘Sollemnitatem uocat impressionem signaculi sancte crucis; sed pone quod proponat in animo suo quod ibit ultra mare, numquid tenetur? Uidetur quod sic, vt XXVII Q. i proposit<o> [*Decretum Gratiani* C. 27 q. 1 c. 21 *Proposito meliore*]. Sed non est uerum, ut extra .ii. de uo. et uo. litteraturam [*Compilatio II* 3.21.1 = *Decretales* 3.34.3 *Litteraturam*]; nam ibi positam accipitur iam assumptam, ut patet ex littera. C<ardinalis>.’ (Paris, Bibliothèque Nationale, MS Lat. 3932, fol. 167^{vb}). Likewise, the gloss to the *Summa de penitentia* of St. Raymond de Peñafort († 1275) ad v. *Privatum sive simplex* states: ‘Nota quod uotum simplex est cui nulla adhibetur sollemnitas. Sollempne uotum dicitur cui certa notificatio uel expressio de iure aut de consuetudine introducta adhibetur. In voto peregrinationis adhibetur sollemnitas per susceptionem pere et baculi benedicti a sacerdote et per susceptionem crucis in uoto terre sancte.’ (Innsbruck, Universitätsbibliothek, MS 266, fol. 28^v-29^r).

² Thus Fulcher of Chartres exclaims: ‘O quam dignum erat et amoenum nobis omnibus cruces illas cernentibus, vel sericas vel auro textas aut quolibet genere pallii decores, quas in chlamydibus suis aut birris aut tunicis iussu praedicti papae post votum eundi super

by a vow to undertake the Crusade simply sewed crosses of cloth to their clothing, as the pope directed, as a token of their commitment.

How quickly a formal ceremony developed for the conferring of the Cross on those who had made the Crusade vow is not apparent. At any rate, the tenth canon (*Eis qui Hierosolymam proficiscuntur*) of the First Lateran Council (1123) makes no reference to a formal ceremony for this purpose,³ while the bull *Quantum praedecessores* of Pope Eugene III, proclaiming the so-called second Crusade in 1145, is also silent on the subject.⁴ In Odo of Deuil's account of the preaching of the second Crusade, however, St. Bernard is described as sowing rather than distributing a parcel of Crosses among the masses, while the French king received a Cross sent to him by the pope⁵ and it is possible that the existence of some more or less formal ceremony of bestowing the Cross might be inferred from this description. By the last quarter of the twelfth century, however, there begin to appear more positive evidences for the use of a formal ritual for the conferring of the Cross. In an undated letter to Pope Alexander III (1159-1181), for example, Cardinal Henri de Marcy describes the taking of the Cross by the Count of Champagne:

Nuper enim circa Dominici natalis proxima sacramenta de manu legati vestri vivificae crucis signum pia devotione suscipiens, publicae solemnitatis gaudium inopinatae laetitiae festivitate praevenit . . .⁶

Giraldus Cambrensis, too, has left an account of his own reception of the Cross at the hands of Archbishop Baldwin of Canterbury at Radnor in 1188. In his usual modest vein, the Welshman relates how, after the Archbishop's sermon:

umeros suos peregrini consuebant! Sane pugnatore Dei merito victoriae signo insigniri et muniri debebant, qui ob honorem eius ad proeliandum se praeparabant. Et quoniam significans sub agnitione fidei circa se sic pinxerunt, denique significatum derivativum verius adepti sunt. Speciem insignierunt, ut rem speciei consequerentur.' — *Historia Hierosolymitana* 1.4.4, ed. by Heinrich Hagenmayer (Heidelberg 1913) 140-142. Cf. the accounts of Baldric of Dol, *Historia de peregrinatione Jerosolimitana*, *Recueil des historiens des croisades*, 16 vols. in 17 (Paris 1841-1906), *Historiens occidentaux* 4.16; Guibert de Nogent, *Gesta Dei per Francos*, in *Recueil des historiens des croisades, hist. occ.*, 4.140; Robert the Monk, *Historia Iherosolomitana*, *Recueil des historiens des croisades, hist. occ.*, 3.729-730.

³ *Conciliorum oecumenicorum decreta*, ed. by J. Alberigo, P. P. Joannou, C. Leonardi, and P. Prodi, editio altera (Freiburg i/Br. 1962) 167-168.

⁴ *Regesta pontificum romanorum*, ed. by P. Jaffé, 2d. ed. rev. by S. Loewenfeld, F. Kaltenbrunner, and P. Eward, 2 vols. (Leipzig 1885-1888; r. p. Graz 1956) 8796 and 8876. Text in Otto of Freising, *Gesta Friderici imperatoris* 1.35, ed. G. H. Pertz (Hannover 1867); (*MGH Scriptores rerum Germanicarum*) 55-57.

⁵ *De profectione Ludovici VII in Orientem*, 1, ed. and trans. by Virginia G. Berry (New York 1948, *Records of Civilization, Sources and Studies*) 8; ed. by Henri Waquet (Paris 1949) *Documents relatifs à l'histoire des croisades* 22.

⁶ Henricus de Castro Marsiaco, *Epist.* 1, PL 204.215-216.

qui scripsit haec, aliis exemplum praebens, se primus erexit, et ad validissimam quoque omnium inductionem, praemissis quidem occasionaliter adjutam, post crebras et anxias secum disputationes, ob temporis demum injuriam et crucis Christi contumeliam, propriae rationis persuasione, ad pedes viri sancti provolutus crucis signaculum devote suscepit.⁷

Gerald's description of the preaching of the Crusade in Wales also indicates, incidentally, that by this period the Crusade preachers had developed a reasonably systematic procedure. Indeed, one may speak without great exaggeration of the prosecution of their mission by a team of preachers and assistants. Thus, for example, Gerald describes their operations at Usk:

Igitur apud Oschae castrum, tam ad archiepiscopi sermonem, quam ad viri boni et honesti Guillelmi Landavensis episcopi, qui per suam diocesim nobis fideliter astitit, persuasionem, Alexandro quoque Bangorensis ecclesiae archidiacono ubique ad Gualenses interprete existente, multitudo virorum cruce signatur.⁸

This mission was considered notably successful, as the preachers managed to recruit for their holy work the most outstanding criminals, murderers, bandits, and thieves of the region, to the astonishment (and, no doubt, the relief) of many persons.

Whatever their background, character, or record, all Crusaders were classed by Canon Law as a specially privileged species of pilgrims.⁹ Indeed, they were almost universally referred to simply as *peregrini* up to the end of the twelfth century, when a proper technical term, *cruce signati*, finally began to be used to designate them. It is therefore not surprising to discover from the liturgical texts of the period that the ceremony for blessing and bestowing the Crusader's cross develops as an addendum to the service for blessing and bestowing the scrip and staff, the traditional insignia of pilgrims. The history of the ceremony's origins and development is evidently both complicated and obscure and this paper merely attempts to deal in a preliminary way with the evidence culled from twelve liturgical texts, nine of them of English

⁷ Giraldus Cambrensis, *Itinerarium Kambriae* 1.1, ed. by J. F. Dimock in vol. 6 of Giraldus' *Opera* (London 1861-1891; Rolls Series 21) 14.

⁸ *Itinerarium Kambriae* 1.5, ed. by Dimock, 55.

⁹ The privileges enjoyed by Crusaders included such valuable rights as an immunity from payment of interest on loans, protection against creditors, the *privilegium fori*, a personal protection against molestation and a similar guarantee of protection for their wives, families, and property, the right to enjoy income from benefices while non-resident, as well as the spiritual privilege of the Crusade indulgence. A brief account of Crusade privileges may conveniently be found in Michel Villey, *La Croisade: essai sur la formation d'une théorie juridique* (Paris 1942; *L'église et l'état au moyen âge* 6) 141-158; a more detailed account is that of Émile Bridrey, *La condition juridique des croisés et le privilège de croix. Etude d'histoire du droit français* (Paris 1900).

origin, in the hope that this may help to indicate something about the character of the ceremony and its growth in one corner of the medieval world.

The earliest of the texts examined here is the service of blessing the scrip and staff from a late eleventh-century pontifical whose fragmentary remains are now MS. Cotton Vitellius E. XII [hereafter designated A] in the British Museum.¹⁰ This text presents, in fact, two forms of the service, and elements of both of them subsequently reappear in many later English service books, as is shown in Table I of Appendix I below. The structure of the two forms of the ceremony in A is quite simple: one (or two) prayers at the beginning, a formal bestowing of the insignia upon the pilgrims, and one (or two) prayers at the end. A second, and equally simple text of this service occurs in the Worcester Pontifical, which dates from the very late eleventh- or very early-twelfth century — from the period of the first Crusade, in fact.¹¹ Three of the four formulas employed in the W form of the service also occur in the second of the two A texts, while the remaining prayer of the W group, *Deus qui tua ineffabili*, is found in five of the nine English liturgical books examined here. Even shorter and simpler than A and W is the form for the blessing of the scrip and staff in the twelfth-century Roman Pontifical [B].¹² Here the ceremony consists simply of a prayer of blessing and two brief formulas for the presentation of the insignia to pilgrims.

The earliest English Pontifical to add a formula for the taking of the cross to the ceremony for the blessing of the scrip and staff is the twelfth-century Ely Pontifical [E], which is of special interest on several scores. For one thing, the Ely Pontifical evidently incorporates three differing liturgical traditions for the blessing of the pilgrim's scrip and staff, as appears from the three distinct formularies which it includes for bestowing these insignia on

¹⁰ The manuscript is described at some length by W. G. Henderson in his edition of the *Liber pontificalis Chr. Bainbridge archiepiscopi Eboracensis* (Durham 1875; Surtees Society Publications 61) xxiv-xxvii. The blessing of the scrip and staff from this MS was published by Henderson in an appendix to his edition of the *Manuale et processionale ad usum insignis ecclesiae Eboracensis* (Durham 1875; Surtees Society Publications 63) 207*-208*, and the present analysis is based on Henderson's edition. At least a part of this manuscript was once in the Library of Durham Cathedral, but the provenance of the pontifical itself is uncertain; see also N. R. Ker, *Medieval Libraries of Great Britain*, 2d ed. (London 1964; Royal Historical Society, Guides and Handbooks 3) 73 and 357 (Durham, Ereslam). Ker assigns fol. 55-113 of Vitellius E. XII to the mid-fifteenth century.

¹¹ The Worcester Pontifical is now MS 146 of Corpus Christi College, Cambridge, and is described by Henderson, *Liber pontificalis Chr. Bainbridge* xxx. The blessing of the scrip and staff is edited from this MS by Henderson, *Manuale Eboracense* 208*. The manuscript was written during the pontificate of Bishop Sampson of Worcester, 1096-1112. See also Ker, *Medieval Libraries*, 206.

¹² Michel Andrieu, ed., *Le Pontifical romain du XII^e siècle (Le Pontifical romain au moyen âge 1 [Studi e Testi 86: Città del Vaticano 1938])* 265.

pilgrims. Further, the E form of the ceremony is markedly longer and more elaborate than the earlier forms. Commencing with three psalms, a *Kyrie* and *Pater noster*, it continues with a set of verses and responses, a prayer of invocation, a blessing, and the three formulas for bestowing the scrip and staff, each followed by a concluding prayer. At this point, the original form of the E ceremony apparently ended, but in one of the two extant MSS. of E, there is added, either as an afterthought or, more probably, as a recent innovation, a formula for blessing and bestowing the Crusader's cross.¹³ This suggests rather strongly that the ceremony for taking the cross did not appear in the parent texts from which the present manuscripts were copied and, too, that this text must represent a rather early stage in the development of the ceremony of taking the cross. In addition, since the rites for blessing the insignia of pilgrims in the E text show a close but complex pattern of affinities with most of the other English rituals for this ceremony which are examined here, as appears from the analyses in Table IV below, and, at the same time present only very slight resemblances to the Continental formulas, it seems reasonable to assign to E (or, perhaps, one of its close relatives) a

¹³ The Ely Pontifical survives in two MSS, both of which are now at Cambridge: Cambridge University Library, MS L1.2.10 (blessing of pilgrims at fol. 74^r-75^v) and Trinity College, Cambridge, MS B.XI.10 (blessing of Crusaders and pilgrims at fol. 100^r-103^v). The two manuscripts are obviously very closely related and are nearly contemporaneous, but since the formula for the blessing and bestowal of the cross occurs only in the Trinity College manuscript, I am inclined to believe that this manuscript is slightly the later of the two. The fact, moreover, that in the Trinity manuscript the ceremony for blessing the cross is separated from the blessing of pilgrims' insignia by a group of miscellaneous blessings—for new wine, for bread, fruit, what-you-will (*ad omnia que uolueris*), bread (a second formula), salt (with an alternate formula), and salt and water—together with the omission of this formula altogether from the University Library MS, strongly suggests that this blessing may be an addition to the parent text. The MSS of the Ely Pontifical are described by Henderson, *Liber pontificalis Chr. Bainbridge* xxxi-xxxii, and by H. A. Wilson in the preface to his edition of *The Pontifical of Magdalen College* (London 1910; Henry Bradshaw Society Publications 39) xiv-xvi. The text of the blessing of pilgrims and Crusaders from the Ely Pontifical was published by Henderson in an appendix to his edition of the *Manuale Eboracense* 209*-210*, and the blessing of pilgrims alone by Wilson in the appendix to *The Pontifical of Magdalen College* 239-241. As neither of these editions is entirely satisfactory, however, a fresh edition is presented in Appendix II below. The Trinity College MS is an octavo volume (6½" × 9¼") of 120 folia, with added gatherings of six and four leaves respectively at the beginning and end. It was written in England, probably at Christ Church, Canterbury, during the third quarter of the twelfth century. The MS was given to Trinity College by Thomas Neville, who was both Master of the College (1593-1615) and Dean of Canterbury (1597-1615). The binding is stamped with Neville's arms. The University Library MS is a folio, containing 92 leaves written on vellum. The text is imperfect at both beginning and end. It appears to have been written at Ely during the last half of the twelfth century.

key role in the transmission and subsequent elaboration of a distinctively English family of blessings for pilgrims and Crusaders.¹⁴

Another late twelfth-century English service book which includes a formula for blessing a Crusader's cross, as well as a formula for blessing and bestowing a pilgrim's insignia is the Pontifical of Magdalen College [M], which seems to have originated at Canterbury.¹⁵ The service for pilgrims in M contains elements which are also common to A, W, and E, but the M formulas for blessing the staff and the cross do not occur in any of the other texts considered here.

Yet another pontifical of the late twelfth- or early thirteenth century which also originated at Canterbury is now in the library of Trinity College, Dublin [T].¹⁶ Although T does not include a formula for blessing and bestowing the cross, its version of the blessing and bestowing of the pilgrim's insignia is closely akin to the E version. In view of the composite character of the E text, together with the fact that there is no element in T which is not represented in E, although many of the E formulas are missing from T, it is plausible to conclude that T is a descendant of one of the ancestors of the E text.

By way of comparison with the English formulas for these rites, another Continental version, that in the thirteenth-century Pontifical of the Roman Curia [B-2], may be mentioned, particularly as it contains an early formula for the taking of the Crusader's cross.¹⁷ B-2 shows a marked similarity to several of our English formulas, particularly the E text and the texts of the Sarum group. Its affinity to these English formulas is, in fact, far more pronounced than its relationship to the twelfth-century Roman pontifical [B].

A further thirteenth-century form of the ceremony for blessing pilgrims' insignia and taking the cross occurs in the Coventry Pontifical, now in the Cambridge University Library [C].¹⁸ Although there are similarities both

¹⁴ Some further accounts of Continental formulas for the rite of blessing pilgrims' insignia and taking the Crusader's cross may be found in Adolph Franz, *Die kirchlichen Benediktionen im Mittelalter*, 2 vols. (Freiberg i/Br. 1909; r. p. Graz 1960) 2.271-89, 302-7. Other texts for these ceremonies may be found in the French pontificals whose contents were analysed by V. Leroquais, *Les pontificaux manuscrits des bibliothèques publiques de France*, 4 vols. (Paris 1937). Leroquais' analyses, unfortunately, do not include any substantial reports of the texts of these formulas or even of their incipits and further investigation will be required to determine their relationships with the rites of English provenance which are discussed here.

¹⁵ The manuscript of this pontifical, now No. 226 in the Library of Magdalen College, Oxford, is described by Wilson in the preface to his edition of the text vii-xiii.

¹⁶ MS. B.3.6. It is described by Wilson, *Pontifical of Magdalen College* xvi-xxi, who also edited its texts for the blessing of pilgrims' insignia, 241-242.

¹⁷ Andrieu, *Le pontifical romain au moyen âge* 2.418-20.

¹⁸ The sole manuscript is described by Henderson, *Liber pontificalis Chr. Bainbridge* xxxv, and the texts for the blessing of pilgrims' insignia and the taking of the cross are published in his *Manuale Eboracense* 210*. As Henderson's edition is marred by some omissions, however, a new edition is presented in Appendix II below from MS Ff.6.9 of Cam-

between C and E and also between C and the Sarum version of these rites, the C form contains a number of elements which are unique among the texts examined here: its opening prayer, its two sets of responsions, its use of *Ps.* 118, and the closing formula for bestowing the Cross are paralleled in none of the other ceremonies.

There is a striking contrast between the rather closely related group of English texts thus far discussed and the late thirteenth-century Pontifical of Gulielmus Durandus the Speculator (ca. 1231-1296), the celebrated jurist and Bishop of Mende [D].¹⁹ The D text of the ceremonies for blessing the insignia of pilgrims and conferring the pilgrims' insignia and the cross is of special interest since D was the model for the revised Roman Pontifical which was prepared at the direction of Pope Innocent VIII (1484-1492). Indeed, the ritual for taking the cross which still appears in the *Pontificale Romanum* in modern times follows precisely the formulas which appear in D.²⁰ As is shown in Table VIII below, the relationship of D to the English liturgical formulas for these ceremonies is very slight. Aside from the *Kyrie-Pater noster* element, which is common to so many ceremonies of blessing that it has a negligible value for establishing relationships, there is only one prayer which is common to D and to some of the English forms of the service for blessing the insignia of pilgrims.

Finally, three late medieval forms of these rites may be mentioned briefly. One is that of the York Manual [Y], of which the earliest manuscript dates from the fourteenth century.²¹ The affiliation of the Y text with the A and E tradition is marked, but Y apparently also draws upon at least two other traditions, as is evident from the twin formulas for the blessing and bestowing of the cross. Second, there is the fifteenth-century Lincoln Pontifical [L] now in the Cambridge University Library, which once belonged to John Russel,

bridge University Library fol. 85^r-86^r. The manuscript is of quarto size, written on parchment in a hand of the early thirteenth century, and contains 104 leaves. The *Catalogue of the Manuscripts Preserved in the Library of the University of Cambridge*, 6 vols. (Cambridge, 1856-1867) 2.513-514, describes it as a 'Pontificale ad usum Ecclesiae Sarum,' but the blessings for Crusaders and pilgrims are clearly not of the Sarum type, as Table VII shows. The Coventry connections of the pontifical were pointed out by Henderson in his introduction to the Bainbridge pontifical. Ker, *Medieval Libraries*, 49, identifies this manuscript as one of those bequeathed to the Benedictine Abbey of St. Werberg, Chester, by Richard of Chester († 1347), Canon of York Minster.

¹⁹ The Pontifical of Durandus is edited by Andrieu in vol. 3 of *Le pontifical romain*. The rites for blessing pilgrims' insignia and taking the cross occur in lib. 2, tit. 30-31 (pp. 541-545).

²⁰ *Pontificale romanum in tres partes distributum Clementis VIII ac Urbani VIII auctoritate recognitum*, ed. by J. Catalani (Paris 1851) 2.538-545. I have also used the three volume edition published at Malines in 1873, in which this rite occurs at 2.268-270.

²¹ Henderson, *Manuale Eboracense* 103-106.

Bishop of Lincoln (1480-1494).²² L is clearly a pontifical of the Sarum rite, as appears from a comparison of it with a third text, the Sarum Manual [S].²³ While L and S are notably more elaborate and more closely related to the post-Reformation service books than are any of the earlier forms of the ceremonies dealt with here, their strong similarities to the earlier English forms of these rites are most striking.

From the data provided by the analyses of these texts, three conclusions seem warranted. First, a formal ceremony for taking the cross developed out of the ceremony for blessing the insignia of pilgrims and the two ceremonies remained closely associated throughout the later Middle Ages.²⁴ The development of the formal liturgy for blessing the cross does not appear to have begun, in England at any rate, before the third quarter of the twelfth century.

Second, there grew up in England a variety of interrelated formulas for these two blessing ceremonies. The English formulas included certain elements found in the twelfth-century Roman Pontifical, and in the thirteenth-century Pontifical of the Curia but were largely independent of the liturgical tradition which is reflected in the Pontifical of Durandus and the modern Roman Pontifical.

Third, the traditional English forms for these blessings persisted in very large part down to the end of the fifteenth century (as a literary form, at least, if not necessarily in actual practice), as evidenced by the York Manual the Lincoln Pontifical, and the Sarum Manual.

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²² Cambridge University Library, MS Mm.3.21. The ceremony for blessing pilgrims and bestowing the cross occurs at fol. 194^v-196^v and is edited in Appendix II below. The MS is of folio size, written in a fifteenth-century hand on vellum in double columns of 33 lines. It contains 286 folia in all.

²³ The Sarum *Ordo ad servitium peregrinorum faciendum* is reprinted by Henderson, *Manuale Eboracense*, 26*-28*, from the 1506 edition of the *Manuale ad usum Sarum*. But especially to be commended now is the edition prepared by A. J. Collins for the Henry Bradshaw Society, vol. xci, published in 1960; for the present *Ordo*, see pages 60-63.

²⁴ The insignia of the pilgrim and the development of the rite for conferring the insignia have recently been dealt with by Francis Garrisson, 'A propos des pèlerins et de leur condition juridique' *Études d'histoire du droit canonique dédiées à Gabriel Le Bras* 2 vols. (Paris 1965) 2.1168-1177. Garrisson also concludes, as I have, that the ceremony of conferring the Cross develops as an extension of the ceremony for bestowing the scrip and staff, not the other way around, as was held by Franz, *Die kirchlichen Benediktionen* 2.273.

APPENDIX I

COMPARATIVE TABLES OF THE RITES FOR BLESSING PILGRIMS' INSIGNIA
AND THE TAKING OF THE CRUSADERS' CROSS

The following *sigla* are used in the tables:

- A — Cotton Vitellius E. XII
- B — Twelfth-Century Roman Pontifical
- B-2 — Thirteenth-Century Pontifical of the Roman Curia
- C — Coventry Pontifical
- D — Pontifical of Gulielmus Durandus
- E — Ely Pontifical
- I — *Itinerarium clericorum* in the *Breviarium Romanum*, 4 vols. (Torino 1953)
- L — Lincoln Pontifical
- R — *Missa pro peregrinantibus et iter agentibus* in the *Missale romanum ex decreto sacrosancti concilii Tridentini restitutum . . . editio VII juxta typicam Vaticanam amplificata III* (New York 1949)
- S — Sarum Manual
- T — Pontifical of Trinity College, Dublin
- W — Worcester Pontifical
- Y — York Pontifical

TABLE I

BLESSING OF PILGRIMS IN MS COTTON VITELLIUS E. XII [A]

<i>Cotton MS.</i>	<i>Also found in</i>
<i>Form I</i>	
Or. Domine, Deus omnipotens, humani generis creator	Y
Or. Confortator et corroborator	M [Blessing of one who is about to fight (a duel?)]
<i>Traditio perae</i> : Accipe peram	W; cf. L, B-2
<i>Traditio baculi</i> : Accipe baculum	E, T, B, S; cf. B-2, C, L
Or. Cum sint universa nobis incognita	
Or. Conservet te omnipotens Deus	
<i>Form II</i>	
Asperges me	
Or. Deus omnipotens qui mundum	E, Y
<i>Traditio perae</i> : Accipe hanc peram	W, E, M, C, Y; cf. L, B-2
<i>Traditio baculi</i> : Per hunc baculum	W, E, M, Y
Or. Omnipotens Deus, qui es<t> via,	W, E (bis), M, S, Y, L, B-2

TABLE II

BLESSING OF PILGRIMS IN THE WORCESTER PONTIFICAL [W]

*Worcester Pontifical**Or.* Domine Iesu Christe, qui tua ineffabili*Traditio perae:* Accipe hanc peram, signum*Traditio baculi:* Per hunc baculum accipias*Or.* Omnipotens Deus, qui es<t> via, veritas
et vita*Also found in*

B, B-2, E, S, T

A, E, M, C, Y; cf. S, L,
B-2

A, E, M, Y

A, B-2, E, M, S, Y, L

TABLE III

BLESSING OF PILGRIMS IN THE ROMAN PONTIFICAL OF THE
TWELFTH CENTURY [B]*Pontificale Romanum**Or.* Domine Iesu Christe qui tua ineffabili*Traditio perae:* In nomine sanctae et individuae
Trinitatis. Sit tibi iugum*Traditio baculi:* Accipe baculum sustentationis*Also found in*

W, E, T, S, L, B-2

E, T

Cf. A, E, T, S, L, B-2

TABLE IV

BLESSING OF PILGRIMS AND TAKING OF THE CROSS IN THE
ELY PONTIFICAL [E]*Ely Pontifical**Ps.* 90*Ps.* 120*Ps.* 129*Kyrie.* Pater noster.*Preces**Or.* Adesto Domine*Or.* Deus infinite misericordie*Traditio perae* (1): Accipite has peras*Traditio baculi* (1): Per hos baculos*Or.* Domine Ihesu Christe qui tua ineffabili*Traditio perae* (2): In nomine sancte et indiuidue
trinitatis sit tibi*Traditio baculi* (2): Accipe baculum sustenta-
tionis*Or.* Deus omnipotens qui mundum*Also found in*

T, Y, L, S, B-2

T, Y

T, Y

C, L, Y, D, I, T, S

T, Y; cf. S

L, I, T, Y, S, R

C, L, Y, D, S

cf. C, L, M, B-2

M

L, T, B, B-2, W, S

Y, T, B

A, B, B-2, C, L, S, T

cf. M

<i>Traditio perae</i> (3): Accipe hanc peram	W, M, S, Y; cf. L
<i>Traditio baculi</i> (3): Per hunc baculum accipies	W, M, Y
<i>Or.</i> Omnipotens Deus qui est uia, ueritas et uita	A, W, M, S, L, Y, B-2
<i>Benedictio crucis</i> : Rogamus te domine	C
<i>Traditio crucis</i> : Suscipe iugum	
<i>Or.</i> Omnipotens Deus, uia ueritas et uita (<i>bis</i>)	

TABLE V

BLESSING OF PILGRIMS AND TAKING THE CROSS IN THE PONTIFICAL
OF MAGDALEN COLLEGE [M]

<i>Pontifical of Magdalen College</i>	<i>Also found in</i>
<i>Benedictio baculi</i> : Deus sine quo nichil potest benedici	
<i>Traditio perae</i> : Accipe hanc peram signum pere- grinationis	Cf. C, A, W, E, Y, L, B-2
<i>Traditio baculi</i> : Per hunc baculum accipias bene- dictionem	E, T, A, W, Y
<i>Or.</i> Omnipotens Deus qui est uia, ueritas et uita	E, L, A, W, S, B-2
<i>Benedictio crucis</i> : Domine deus pater omnipo- tens qui	

TABLE VI

BLESSING OF PILGRIMS IN THE PONTIFICAL OF TRINITY
COLLEGE, DUBLIN [T]

<i>Pontifical of Trinity College, Dublin</i>	<i>Also found in</i>
<i>Ps.</i> 90	E, Y, L, S, B-2
<i>Ps.</i> 120	E, Y
<i>Ps.</i> 129	E, Y
<i>Kyrie.</i> Pater noster.	E, C, L, Y, D, I, S, B-2
<i>Preces</i>	E, Y
<i>Or.</i> Adesto domine	E, Y, I, R, L, S
<i>Benedictio pere et baculi</i> : Domine ihesu christe qui tua	E, B, W, S, L, B-2
<i>Traditio perae</i> : In nomine sancte et indiuidue trinitatis. Sit tibi	E, B
<i>Traditio baculi</i> : Accipe baculum sustentationis	E, L, B, S, Cf. B-2

TABLE VII

**BLESSING OF PILGRIMS AND TAKING OF THE CROSS IN THE THIRTEENTH
CENTURY PONTIFICAL OF THE ROMAN CURIA [B-2]**

<i>Pontifical of the Roman Curia</i>	<i>Also found in</i>
<i>Or.</i> Domine Iesu Christe qui tua ineffabili <i>Traditio perae:</i> In nomine domini nostri Iesu Christe, accipe hanc peram, signum pere- grinationis	B, W, E, T, L, S Cf. A, W, E, M, C, Y, L, S
<i>Traditio baculi:</i> Accipe baculum hoc in nomine patris et filii et spiritus sancti, sustentatio- nem itineris	A; cf. B, T, L, S
<i>Or.</i> Omnipotens sempiternus Deus, qui est via, veritas et vita	A, W, E, M, Y, L, S
<i>Super crucem eius qui iturus est in Ierosoli- mam</i>	
<i>In directum</i>	
Ps. 90	E, T, Y, L, S
Pater noster	E, T, C, Y, L, S
Dominus vobiscum	
<i>Or.</i> Deus invicte potentie, maiestatis immense	C, L

TABLE VIII

**BLESSING OF PILGRIMS AND TAKING THE CROSS IN THE
COVENTRY PONTIFICAL [C]**

<i>Coventry Pontifical</i>	<i>Also found in</i>
<i>Or.</i> Exaudi nos omnipotens et misericors Deus	
Kyrie. Pater noster.	E, L, Y, D, I, T, S, B -2
<i>Preces</i> (1)	
Ps. 118	
<i>Preces</i> (2)	Cf. S
<i>Or.</i> Deus infinitae misericordiae	E, L, Y, D, S
<i>Or.</i> Deus inuictae potentiae	L, S, B-2
<i>Traditio perae:</i> Accipe hanc peram	Cf. E, L, M, Y, B-2
<i>Traditio burdonis:</i> Accipe hunc burdonem	Cf. E, L, M, T, B, B-2
<i>Benedictio crucis:</i> Rogamus te domine	E
<i>Traditio crucis:</i> Suscipe signum sanctae crucis	

TABLE IX

TAKING OF THE CROSS AND BLESSING OF PILGRIMS IN THE
PONTIFICAL OF DURANDUS [D]*Pontifical of Durandus**Also found in**Lib. II Tit. 30*

Adiutorium nostrum. Dominus vobiscum

Or. Omnipotens sempiterne Deus, qui crucis

Or. Domine Iesu Christe fili Dei vivi qui es verus

Traditio crucis: Accipe signum crucis

Lib. II Tit. 31

Deus in adiutorium meum.

Or. Domine Iesu Christe redemptor mundi

Or. Omnipotens sempiterne Deus, humani generis reformator

Cf. Y

Traditio scarpcellarum et baculorum: Accipite has scarpcellas et hos baculos, habitum

Ant. Euntes ibant et flebant

Ps. 125

Kyrie eleison. Pater noster.

E, T, C, Y, L, S,

Preces

Or. Deus infinite misericordie

C, E, Y, L, S

TABLE X

BLESSING OF PILGRIMS AND TAKING THE CROSS IN THE
YORK MANUAL [Y]*The York Manual**Also found in*

Dominus vobiscum.

Or. Deus omnipotens Pater, qui mundum

A

Or. Dominus Deus omnipotens, humani generis creator

A; cf. D

Aspersio aquae benedictae

Traditio perae: Accipe hanc peram signum

A, W, M, Y; cf. L, B-2

Traditio baculi: Per hunc baculum accipias

A, W, M

Ps. 67

Ps. 119

Cant. Luc. 1.68

Kyrie. Pater noster.

E, S, C, L, D, T, B-2

Preces

Or. Omnipotens sempiternus Deus, qui est via, veritas et vita

S, A, W, M,

Benedictio crucis (1): Benedic, Domine, hanc crucem qui per

Benedictio crucis (2): Benedic, Domine, hanc crucem tuam qua

Traditio crucis (1): Accipe signaculum sanctae
crucis

<i>Ps.</i> 90	S, E, T, L, B-2
<i>Ps.</i> 120	E, T
<i>Ps.</i> 129	E, T
Kyrie. Pater noster.	E, S, C, L, D, T, B-2
<i>Preces</i>	E, T
<i>Or.</i> Adesto, Domine, Supplicationibus nostris	S, E, T, L
<i>Or.</i> Deus, qui diligentibus te	S, L
<i>Traditio crucis</i> (2): Accipe vestimentum cruce	S, L
<i>Or.</i> In nomine sanctae et individuae trinitatis. Sit tibi hoc signum	E
<i>Or.</i> Deus infinitae misericordiae	S, E, C, L, D

TABLE XI

BLESSING OF PILGRIMS AND TAKING THE CROSS IN THE
LINCOLN PONTIFICAL [L]

<i>Lincoln Pontifical</i>	<i>Also found in</i>
<i>Ps.</i> 53	
<i>Ps.</i> 24	S
<i>Ps.</i> 50	S
<i>Ps.</i> 90	S, B-2, E, T,
Kyrie. Pater noster.	E, T, Y, S, B-2
<i>Preces</i>	S; cf. E, C
<i>Or.</i> Adesto domine supplicationibus	E, T, Y, R, I, S
<i>Or.</i> Deus qui ad vitam ducis	S
<i>Or.</i> Deus qui diligentibus te	Y, S
<i>Or.</i> Domine Iesu Christi qui tua	E, T, B, W, S, B-2
<i>Traditio pere:</i> In nomine domini nostri iesu chris- ti accipe peram	Cf. E, T, C, B, A, M, Y, S, B-2
<i>Traditio baculi:</i> Accipe hunc baculum sustenta- tionis	S; cf. E, T, C, A, B, B-2
<i>Benedictio crucis:</i> Deus inuicte potentie	C, S, B-2
<i>Traditio crucis:</i> Accipe vestimentum	Y, S
<i>Missa pro iter agentibus:</i>	
<i>Intr.</i> Esto mihi	S
<i>Or.</i> Adesto domine supplicationibus (<i>bis</i>)	E, T, Y, R, I, S
<i>Lectio</i> Gen. 24. 7	S
<i>Grad.</i> Esto mihi (<i>bis</i>)	
<i>Evang.</i> Matt. 10. 7-15	R
<i>Offert.</i> Sperent in te omnes	
<i>Secr.</i> Propiciare quesumus domine	R
<i>Comm.</i> Tu mandasti	R
<i>Postcomm.</i> Sumpta quesumus	R
<i>Or.</i> Deus infinite misericordie	E, C, Y, D, S,
<i>Or.</i> Omnipotens, Deus que est uia, ueritas et uita	E, M, A, B, S, Y, B-2

TABLE XII

BLESSING OF PILGRIMS AND TAKING THE CROSS IN THE
SARUM MANUAL [S]

<i>Sarum Manual</i>	<i>Also found in</i>
<i>Ps.</i> 24	L
<i>Ps.</i> 50	L
<i>Ps.</i> 90	E, T, Y, L, B-2
<i>Kyrie. Pater noster.</i>	E, T, Y, D, L, B-2
<i>Preces</i>	L; cf. E, C
<i>Or. Adeſto, Domine, supplicationibus</i>	E, T, Y, R, I, L
<i>Or. Deus, qui ad vitam ducis</i>	L
<i>Or. Deus, qui diligentibus te</i>	Y, L
<i>Benedictio perae et baculi: Domine Jesu Chris-</i> <i>te, qui tua ineffabili</i>	B, W, E, T, L, B-2
<i>Traditio perae: In nomine Domini nostri Jesu</i> <i>Christi, accipe hanc</i>	L, B-2
<i>Traditio baculi: Accipe baculum sustentationis</i>	L; cf. A, B, C, E, T, B-2
<i>Traditio crucis: Accipe vestimentum</i>	Y, L
<i>Missa pro iter agentibus</i>	L
<i>Or. Deus infinitae misericordiae</i>	E, C, Y, D, L
<i>Or. Omnipotens Deus, qui est via, veritas et vita</i>	A, B-2, W, E, B, Y, L

APPENDIX II

TEXTS

I

THE ELY PONTIFICAL

MSS: A-Trinity College Cambridge, MS B. XI. 10, fol. 100^r-103^v
B-University Library, Cambridge, MS Ll. 2. 10, fol. 74^r-75^v
Benedictio super eos qui peregre profisciscuntur. *Ps.* Qui habitat.¹ *Ps.* Leuaui
oculos meos.² *Ps.* De profundis.³ *Gloria patri.*^a *V. Kyrie eleison. Pater noster.*

¹ *Ps.* 90.

² *Ps.* 120.

³ *Ps.* 129.

^a *Gloria patri: om. A.*

Et ne nos. Ego dixi domine.⁴ Sana animam.^b Saluos fac seruos tuos.⁵ Deus meus sper<antes in te>. Conuertere domine usquequo.⁶ Et deprecabilis. Esto eis domine turris fortitudinis. A facie.⁷ Mitte eis domine auxilium de sancto.⁸ Et de syon. Domine exaudi orationem meam. Et clamor meus.⁹ Dominus uobiscum. Et cum spiritu tuo.

Oratio. Adesto domine supplicationibus nostris et uiam famulorum tuorum in salutis tue prosperitate dispone, ut inter omnes uię et uite huius uarietates tuo semper protegantur auxilio. Per.

Alia oratio.^c Deus infinite misericordię maiestatis immense, quem nec spatia locorum nec interualla temporum ab iis quos tueris abiungunt; adesto famulis tuis in te ubique confidentibus^d et per omnem uiam quam ituri sunt dux eis et comes adesse digneris. Nichil illis aduersitatis noceat, nichil difficultatis obstet cuncta <sint> eis salubria, cuncta sint prospera et sub ope dextere tuę quicquid iusto pecierint desiderio cęleri consequantur effectum.¹⁰ Per.^e

Ad peras dandas.^f Accipite^g has peras signum peregrinationis in nomine patris et filii et spiritus sancti. Amen.

Quando baculos dederis dic: Per hos baculos accipiat benedictionem et misericordiam a deo salutari uestro. Amen.

*Benedictio ad baculum et ad peram. Oratio.*¹¹ Domine Ihesu Christe qui tua ineffabili miseratione ac patris iussione spiritusque sancti cooperatione de cęlo descendisti ouemque perditam diabolica seductione uoluisti querere atque propriis humeris ad cęlestis patrię gregem referre, quique precepisti natis matris ecclesię orando petere, bene uiuendo querere, ac pulsando perseuerare, quo citius inuenire ualeant salutaris pręmia uite. Te humiliter inuocamus domine clementissime quatinus sanctificando benedicere atque benedicendo has peras et baculos digneris sanctificare, ut quicumque eas pro tui nominis amore instar humilis armature lateri suo applicare atque collo suspendere siue in manibus suis gestare, sicque peregrinando suffragia sanctorum humili comitante deuotione studuerint querere. Dextere tuę protecti munimine peruenire mereantur ad gaudia mansionis ęternę. Qui uiuis et regnas.

⁴ Ps. 40.5.

⁵ Ps. 85.2.

⁶ Ps. 89.13.

⁷ Ps. 60.4.

⁸ Cf. Ps. 19.3.

⁹ Ps. 101.2.

¹⁰ Also in Franz, *Die kirchlichen Benediktionen* 2.263, 278; see in addition the other citations noted in Table IV.

¹¹ Cf. Franz, *Die kirchlichen Benediktionen* 2.279.

b Sane anima: A.

c Oratio: om. A.

d confidentibus: considerantibus B.

e Per: om. B.

f Dandas: benedicendas B.

g Accipite: accipe B.

Tunc dentur eis pere. In nomine sanctę et indiuiduę trinitatis sit tibi christi iugum mansuetum^h et leue, ut sue protectionis munimine custodia te ubique comitante quatinus ad portum salutifere remissionis misericorditer merearis attolli, atque ęterne beatitudinis gratia feliciter perfrui. Per eundem.

Ad baculum. Accipe baculum sustentationis uel defensionis domini nostri ihesu christi, quo sustentante gressus itineris tui firmiter pergere ualeas procul amotis uenenosis impulsionibus serpentis antiqui. Per eundem dominum nostrum ihesum. <V.> Asperges me domine.

Benedictio pere et baculi peregrinorum. Deus omnipotens qui mundum ex informi materia fecisti et unicum filium tuum tibi coęternum pro generis humani redemptione spiritu sancto cooperante incarnari iussisti, concedi quesumus ut hanc peram et hunc baculum benedicere digneris atque per uirtutem potentię tuę ab hostibus contra nos dimicantibus inuicta permaneant, ut quicumque ex illis pugnaverint incolumitatem tam corporis quam animę te adiuuante percipiant. Per.

Ad dandam peram. Accipe hanc peram.

Ad baculum. Per hunc baculum accipies benedictionem a domino salutari tuo, qui uiuit et regnat in secula seculorum. Amen. Dominus uobiscum.¹ *Oratio.*¹² Omnipotens deus, qui est uia ueritas et uita, iter tuum in beneplacito suo disponat, Angelum suum raphaellem in hac peregrinatione tui custodem adhibeat, qui ad loca desiderata cum pace tecum eundo^l perducatur et cum salute iterum ad nos redeundo reducat. Sit interuentrix tui beata dei genetrix maria, cum uniuersis angelis et archangelis patriarchis quoque et prophetis. Sint intercessores sancti apostoli petrus et paulus cum cęteris apostolis, Sanctus stephanus atque beatus laurentius cum sanctis martyribus, Sanctus martinus sanctusque nicholaus cum omnibus confessoribus, Sancta maria magdalena^k atque sancta maria egyptiaca sint interuentrices tui cum sacris uirginibus. Optineantque tibi sancti N. quorum queris suffragia cum omnibus sanctis iusta desideria et prosperitatem remissionemque peccatorum ac uitam ęternam. Per. *Benedictio^l crucis.* Rogamus te domine sancte pater omnipotens ęterne deus, ut digneris benedicere hoc tuę sanctę crucis signum ut sit huic famulo (is) tuo (is) remedium salutare, sit soliditas fidei, profectus bonorum operum, redemptio animarum, protectio ac tutela contra seua iacula inimicorum. Per dominum nostrum.

Ad dandam crucem. Suscipe iugum christi quod est fidelibus suis leue onus signo sanctę crucis insignante, quatinus fide abraham exeuntis dextera insignitus, terram uiuentium merearis possidere ubi est fidelium animarum gratissimus portus, prestante domino nostro ihesu christo.

¹² Cf. Franz, *Die kirchlichen Benediktionen* 2.265, with interpolations.

^h Mansuetum: manifestum B.

ⁱ Dominus uobiscum: *rubr. in A. et B.*

^j Eundo: *om. A.*

^k Magdalena: Magdalene B.

^l Benedictio *usque finem*: *om. B.*

*Oratio.*¹³ Omnipotens deus, uia, ueritas et uita, iter tuum in beneplacito suo disponat, angelum sanctum raphaellem in hac peregrinatione tui custodem adhibeat, qui ad loca desiderata cum pace te eundo perducatur et cum salute iterum ad nos redeundo perducatur. Sit interuentrix tui beata dei genetrix maria cum uniuersis angelis et archangelis, patriarchis quoque et prophetis. Sint intercessores tui sancti apostoli petrus et paulus cum ceteris apostolis, martyribus, confessoribus et uirginibus. Optineantque tibi sancti illi quorum queris suffragia cum omnibus sanctis iusta desideria et prosperitatem, remissionemque peccatorum et uitam eternam. Per dominum nostrum ihesum christum filium tuum.

II

THE COVENTRY PONTIFICAL

MS: Cambridge University Library, MS Ff.

6.9, fol. 85^r-86^r

*Ad benedicendum peregrinos.*¹ [E]xaudi nos omnipotens et misericors deus et iter famulorum tuorum propicius comitare atque sicut ubique es, ita ubique adesse dignare ut spaciis necessarii itineris prospero gressu peractis, universos reperiant sospites ac debitas tuo nomini exsolvant grates. Per.

Hic aspergatur aqua benedicta super eos, et postea: Kyrie eleison. Christe eleison. Kyrie eleison. Pater noster. Et ne nos. Ego dixi domine.²

*Ps. Beati immaculati.*³

Uias suas dominus demonstret uobis.⁴ Utinam dirigantur vie vestre. Exsurge domine.⁵

Domine exaudi orationem meam.⁶ Dominus vobiscum.

*Sequitur oratio.*⁷ [D]eus infinite misericordie et maiestatis immense quem nec spacia locorum nec intervalla temporum ab hiis quos tueris abiungunt, adesto famulis tuis in te ubique confidentibus et per omnem quam ituri sunt viam dux eis et comes esse dignare. Nichil adversitatis noceat. Nichil difficultatis obsistat. Cuncta eis salubria sint, cuncta prospera et sub ope dextere tue quicquid iusto petierint desiderio celesti consequantur effectum. Per.

Benedictio pere et burdoni<s> oratio. [D]eus iniuicte potencie et pietatis immense qui famulis tuis [*Ms.*: arma in te] arma uictoria tribuis, quesumus hanc

¹³ Cf. Franz, *Die kirchlichen Benediktionen* 2.265, without interpolations.

¹ Cf. Franz, *Die kirchlichen Benediktionen* 2.264.

² *Ps.* 40.5.

³ *Ps.* 118.

⁴ Cf. *Ps.* 24.4.

⁵ *Ps.* 43.26.

⁶ *Ps.* 101.2.

⁷ Franz, *Die kirchlichen Benediktionen* 2.263-278.

peram et burdonem benedicere digneris, ut uenerande crucis vexillum cuius in eis est designata figura sit inuictissimum robur serui tui. Contra omnia antiqui hostis temptamenta sit in uia defensio, in domo protectio, sit ubique presidium eundo et redeundo, ut cum tua gratia quo cupit pergat et peracto itinere cum commoditate mentis et corporis ad propria reuertı mereatur. Per.

Dando peram dicatur: [A]ccipe hanc peram, habitum peregrinationis tue, in nomine patris et filii et spiritus sancti. Amen.

Dando burdonem dicatur: [A]ccipe hunc burdonem, sustentationem itineris peregrinationis tue. In nomine patris et filii et spiritus sancti. Amen. *Benedictio crucis dande ituris in sanctam terram vel ituris in aliam terram ad expugnandum inimicos crucis.* [R]ogamus te domine sancte pater omnipotens eterne deus ut benedicere digneris hoc signum tue crucis ut sit huic famulo tuo N. remedium singulare, soliditas fidei, perfectio operum, redemptio anime, protectio ac tutela contra seua omnium inimicorum iacula. Per.

Dando crucem dicitur. [S]uscipe signum sancte crucis in nomine ihesu christi qui passus est in cruce pro redemptione nostra in remissione<m> peccatorum tuorum, prestante eodem domino nostri ihesu christo qui cum patre et spiritu sancto vivit et regnat deus. Per.

III

THE LINCOLN PONTIFICAL

MS: Cambridge University Library,
MS Mm. 3. 21, fol. 194^v-196^v

Ordo ad servicium peregrinorum faciendum. In primis dica[n]tur liij <psalmus> [ms.: psalmi] et preces sequentes super eos coram altare prostratos postquam confessi sunt.

*Ps. Ad te domine levavi.*¹ *Ps. Miserere mei deus.*² <Ps.> *Qui habitat.*³ *Et ad unumquemque illorum psalmorum dicitur Gloria patri. Sicut erat. Kyrie eleison. Christe eleison. Kyrie eleison. Pater noster. Et ne nos. Ego dixi domine miserere mei. Sana animam meam quia peccaui tibi.*⁴ *Vias suas dominus demonstret tibi. Et semitas suas doceat te.*⁵ *Gressus <tuos> [ms.: suos] dirigat dominus secundum eloquium suum.*⁶ *Et non dominetur tibi omnis in iusticia. Utinam dirigantur vie tue. Ad custodiendas iustificaciones domini.*⁷ *Perficiat dominus gressus tuos in semitis suis, ut non moveantur vestigia tua.*⁸ *Benedictus*

¹ Ps. 24.

² Ps. 50 (or 55, or 56).

³ Ps. 90.

⁴ Ps. 40.5.

⁵ Ps. 24.4.

⁶ Cf. Ps. 118.133.

⁷ Cf. Ps. 118.5.

⁸ Cf. Ps. 16.5.

dominus deus <qui> prosperum iter faciat tibi. Dominus salutarium nostrorum.⁹ Angelus domini bonus comitetur tecum.¹⁰ Et bene disponat iter tuum ut iterum cum gaudio revertaris ad propria. Beati immaculati in via qui ambulant in lege domini.¹¹ Exurge domine adiuva nos. Et libera nos.¹² Domine deus virtutum. Et ostende faciem.¹³ Domine exaudi. Et clamor.¹⁴ Dominus vobiscum.

Oremus. Adesto domine supplicationibus nostris et viam famuli tui in salutis tue prosperitate dispone ut inter omnes uie et uite huius varietates tuo protegantur semper auxilio. Per Christum.

Oremus. Deus qui ad uitam ducis et confidentem in te paterna protectione custodis, quesumus ut in presenti famulo tuo a nobis egredienti angelicum <tribuas> [ms.: tribuis] comitatum, ut auxilio tuo protectus nullius mali concuciat <formidine> [ms: fortitudine], nullo comprimatur adversitatis languore, nullis irruentis inimici molestetur insidijs, sed spacijs necessarij itineris prospero gressu peractis proprijsque locis restitutus reperiatur hospes ac debitas exsoluat tuo nomini gracias. Per christum.

Oremus. Deus qui in diligentibus te misericordiam <tuam> [ms.: quam] semper impendis et a seruiantibus tibi <in> nulla es regione longinquus, dirige viam huius famuli tui in uoluntate tua ut te protectore, te duce, per iusticie semitas sine offensione gradiatur. Per dominum.

Hic surgant a prostratione. Sequitur benedictio pere et baculi hoc modo. Dominus vobiscum. Oremus. Domine ihesu christe qui tua ineffabili miseratione ac patris iussione spiritusque sancti cooperacione de celo descendere ouemque perditam diabolica seduccione uoluisti querere atque propriis humeris ad celestis patrie gregem referre, quique precipisti filijs matris ecclesie orando petere bene uiuendo querere ac pulsando perseverare ut cicius invenire valeant salutaris premia vite, te humiliter invocamus quatenus sanctificare <et> bene + dicere digneris hanc peram et hunc baculum ut quicumque ea pro tui nominis amore instar humilis armature lateri suo applicare atque collo suo suspendere sive manibus suis gestare, sicque peregrinando suffragia sanctorum humili deuotione studuerit querere, dextere tue protectionis munimine pervenire mereatur ad gaudia mansionis eterne. Qui uiuis et regnas deus per.

Hic ponat episcopus collo peregrini peram dicendo: In nomine domini nostri ihesu christi accipe peram hanc, habitum peregrinationis tue, ut bene castigatus et salvatus pervenire merearis ad limina sanctorum quo pergere cupis et peracto itinere tuo ad nos reuertaris incolumis, per christum dominum nostrum.

Ad baculum. Accipe hunc baculum sustentacionis itineris ac laboris peregrinationis tue ut deuincere ualeas omnes cateruas inimici et peruenire securus ad limina sanctorum quo pergere cupis et peracto obediencie cursu ad nos iterum reuertaris cum gaudio. Per Christum.

⁹ Cf. Ps. 67.20.

¹⁰ Cf. Tob. 5.21.

¹¹ Ps. 118.1.

¹² Ps. 43.26.

¹³ Cf. Ps. 79.8.

¹⁴ Ps. 101.2.

Benedictio crucis pergentis ierusalem.

Dominus vobiscum.

Oremus. Deus invicte potencie pietatis immense atque peregrinancium totius consolacionis auxilium, qui famulis tuis victricia arma tribuis, quesumus hanc crucem devote humilitatis bene+dicere digneris ut uenerande crucis uexillum cuius in ea est designata figura sit inuictissimum robur tui serui contra antiqui hostis validissima temptamenta, sit in uia defensio, sit in domo protectio, sit ubique presidium. Per christum.

Hic detur vestis signata cruce peregrino ab episcopo interim dicente: Accipe vestimentum cruce domini salvatoris signatum ut per illud salus benedictio et virtus prospere proficiscendi ad sepulchrum ipsius tibi comitetur. Qui cum patre.

Hijs peractis dicatur missa pro iter agentibus.

Officium. Esto mihi in deum protectorem et in domum refugij ut saluum me facias, quoniam firmamentum et refugium meum es tu et propter nomen tuum dux michi eris et enutries me.¹⁵ *In tempore paschali:* alleluia, alleluia. *Ps.* In te domine speraui, non confundar in eternum; in iusticia tua libera me et eripe me.¹⁶

Oracio. Adesto domine supplicationibus nostris et uiam famuli tui in salutis tue prosperitate dispone, ut inter omnes uie et uite huius varietates tuo semper protegatur auxilio. Per.

Lecc<io> libri genesis. In diebus illis, locutus est abraham dicens, Dominus deus celi qui tulit me de domo patris mei et de terra natiuitatis mee, qui locutus est michi et iurauit <michi> dicens, Semini tuo dabo terram hanc; ipse mittet angelum suum coram <te> [ms.: me].¹⁷

Graduale. Esto mihi in deum protectorem et in locum refugij ut saluum me facias.¹⁸ Deus in te speraui, non confundar in eternum.¹⁹ Alleluia. V. Qui timent dominum sperent in eum; adiutor et protector eorum est.²⁰

<*Evangelium*> secundum Matheum. In illo tempore, dixit ihesus discipulis suis, 'Euntes predicate <dicentes quia> appropinquauit regnum celorum. Infirmos curate, mortuos suscite, leprosos mundate, demones ejicite. Gratis accepistis, gratis date. Nolite possidere aurum neque argentum in zonis vestris; non peram <in via>, non calciamenta, neque duas tunicas habeatis neque uirga<m>. Dignus est operarius <cibo> suo [ms.: mercede tuam]. In quamcumque autem ciuitate<m> intraveritis, interrogate quis in ea dignus sit. Et ibi manete donec exeatis. Intrans autem in domum, salutate eam dicentes, Pax huic domui. Et si quidem <fuerit> domus illa [ms.: sit] digna, ueniet pax uestra super eam. Si autem non fuerit digna, pax uestra super uos reuertetur. Et quicumque non <receperit> [ms.: acceperit] <vos> nec audierit sermones vestros, exeuntes <foras> de domo uel de ciuitate, excucite pulverem de pedi-

¹⁵ Ps. 30.3-4; cf. Ps. 17.3.

¹⁶ Ps. 30.2 and 70.1.

¹⁷ Gen. 24.7.

¹⁸ Ps. 30.3-4; cf. Ps. 17.3.

¹⁹ Ps. 30.2.

²⁰ Cf. Eccl. 2.9.

bus vestris. Amen dico uobis, tol[1]erabilius erit terre sodomorum et gomorreorum in die iudicij quam illi ciuitati.²¹

Offertorium. Sperent in te omnes qui noverunt nomen tuum, quoniam non derelinquis querentes te; psallite domino qui habitat in syon, quoniam non est oblitus orationem pauperum.²² *In tempore paschali:* Alleluia.

Secretum. Propiciare quesumus domine supplicationibus nostris et has oblationes quas tibi offerimus pro famulo tuo benignus assume; ut uiam illius et precedente gracia tua dirigas et subsequente gracia tua diligas et subsequente comitari digneris ut de actu atque incolumitate eius secundum misericordie tue presidia gaudeamus. Per dominum.

Com<munio>. Tu mandasti mandata tua custodiri nimis: utinam dirigantur uie mee ad custodiendas iustificationes tuas.²³ *In tempore paschali:* alleluia.

Postcommunio. Sumpta quesumus domine celestis misterij sacramenta, ad prosperitatem itineris famuli tui proficiant ut eum ad salutaria cuncta perducant. Per.

Deinde dicantur sequentes oraciones post missam super eum prostratum. Deus infinite misericordie et maiestatis immense quem nec spacia locorum nec interualla temporum ab hijs quos tueris abiungunt, adesto famulo tuo in te ubique confidenti et per omnem quam iturus est uiam dux ei et comes esse dignare; nichil ei aduersitatis noceat, nichil difficultatis obsistat, cuncta ei salubria, cuncta sint propera, et sub ope dextere tue quicquid <iusto> [ms.: iuste] experierit desiderio, celeri consequatur effectum. Per christum.

Oremus. Omnipotens deus qui est uia, ueritas et uita, iter tuum in beneplacito suo disponat, angelum suum raphaellem in hac peregrinatione tui custodem adhibeat, qui ad loca desiderata cum pace tecum eundo perducatur et cum salute iterum ad nos redeundo perducatur. Sit interventrix tui beata dei genitrix cum universis angelis et archangelis, patriarchis quoque et prophetis. Sint intercessores sancti apostoli petrus et paulus cum ceteris apostolis, martiribus, confessoribus et uirginibus. Optineantque tibi sancti quorum queris suffragia cum omnibus sanctis iusta desideria et prosperitatem, remissionemque peccatorum ac vitam eternam. Per eundem.

²¹ *Matt.* 10.7-15.

²² Cf. *Ps.* 9.11-13; offertory of the third Sunday after Pentecost.

²³ *Ps.* 118.4-5.

VIII

A NOTE ON THE ATTESTATION OF CRUSADERS' VOWS

It has long been well known that the first essential juridical act involved in the process of becoming a Crusader was the taking of a vow. Contemporary sources from 1095 onward refer repeatedly to such vows and the canonistic writers and ecclesiastical legislators of the twelfth, thirteenth, and fourteenth centuries devote a rather considerable amount of space in their discussions of the doctrine of vows in general to a specific consideration of the obligations arising from the Crusader's vow and the various means of satisfying this obligation.¹ The ceremony of taking the Cross was considered to be a public ratification of the vow and had the juridical effect of solemnizing it.² The central importance of the vow for the whole functioning of the elaborate mechanism of the Crusade could hardly be much clearer.

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¹ The later decretalist discussions of the Crusade vow are focused most commonly in their commentaries and glosses to titulus 34 of Book 3 of the *Decretales Gregorii IX*, promulgated in 1234. Some of the more important features of this decretalist literature have been analyzed and described by Michel Villey in *La croisade: essai sur la formation d'une théorie juridique* ("L'église et l'état au moyen âge," Vol. VI [Paris, 1942]), especially at pp. 119-127, and also in his paper "L'idée de la croisade chez les juristes du moyen-âge," *Relazioni del X Congresso Internazionale di Scienze Storiche* (Roma, 1955), III, 565-594, especially at pp. 581-586.

² Thus in the Apparatus of Laurentius Hispanus (d. 1248) to *Compilatio III* 3.26.2 (= *Decretales* 3.34.6 *Licet*) ad v. *sollemniter* (Bibliothèque Nationale, Paris, Ms. Lat. 3932, fol. 167^{vb}): "Sollemninitatem uocat impressionem signaculi sancte crucis; sed pone quod proponat in animo suo quod ibit ultra mare, numquid teneatur? Uidetur quod sic, vt XXVII Q. i proposit [*Decretum Gratiani* C. 27 q. 1 c. 21 *Proposito meliore*]. Sed non est uerum, ut extra .ii. de uo. et uo. litteraturam [*Compilatio II* 3.21.1 = *Decretales* 3.34.3 *Litteraturam*]; nam ibi positam accipitur iam assumptam, ut patet ex littera. <C>ardinalis." Also, in the gloss to the *Summa de penitentia* of Raymond de Peñafort (d. 1275) at 1.8 ad v. *Privatum sive simplex* (Innsbruck, Universitätsbibliothek, Ms. 266, fol. 28^v-29^r): "Nota quod uotum simplex est cui nulla adhibetur sollemnitas. Sollempne uotum dicitur cui certa notificatio uel expressio de iure aut de consuetudine introducta adhibetur. In voto peregrinationis adhibetur sollempnitas per susceptionem pere et baculi benedicti a sacerdote et per susceptionem crucis in uoto terre sancte."

In view of this and of the thousands of such vows which presumably were made by intending Crusaders, it is rather surprising that so few official and explicit records of these vows appear to have survived. True, since the vow was essentially a promise made by an individual to God, there was no intrinsic need for a public instrument witnessing the act of making it. The vow might be made privately, without ceremony or witness, and still be perfectly valid and binding, at least *in foro interno*. Still, since this vow had such obvious and serious public consequences as well, it is somewhat disconcerting to find so little in the way of public record of its form, character, and terms.

One reasonably well-known document, to be sure, does record the taking of the Cross by an individual Crusader, but even this document says nothing explicit about the vow and, further, the text itself is in a rather unsatisfactory state. It was originally discovered, apparently, by Dom Berthereau in the register of Guillaume Ferrand, a notary of Marseilles, where it was dated to September 22, 1290. Dom Berthereau transcribed the document in his notes, and it is upon this eighteenth-century transcription that the published versions of this text rest, since the original register seems to have disappeared.³ This is all the more unfortunate as there are three fairly lengthy lacunae in the transcript, where Dom Berthereau presumably found the notary's script indecipherable, although it is possible that these lacunae were already present in the original register. Charles Kohler first published a text of the transcript in the *Revue de l'Orient Latin* for 1899.⁴ It was published again by Adolf Gottlob in 1906, with some suggested interpolations to fill up the lacunae.⁵

In form, this document is a notarized deposition made by one Fulk de Flasanis, guardian of the Franciscan convent at Marseilles, in which Brother Fulk states that he has been commissioned by the Holy See to preach the Cross in aid of the Holy Land and that in virtue of his commission and on the advice of certain brethren he has given the Cross

³ The transcript may be found in the Bibliothèque Nationale, Ms. franç. 9074, fol. 224r.

⁴ Kohler first published the text in his paper "Documents inédits concernant l'Orient Latin et les croisés (XII^e-XIV^e siècles)," *Revue de l'Orient Latin*, VII (1899), 33-34. He reprinted it the following year in his *Mélanges pour servir à l'histoire de l'Orient Latin et des croisades* (2 vols.; Paris, 1900-1906), I, 273-274.

⁵ A. Gottlob, *Kreuzablass und Almosenablass. Eine Studie über die Frühzeit des Ablasswesens* ("Kirchenrechtliche Abhandlungen," Vols. XXX-XXXI [Stuttgart, 1906]), pp. 308-309. From Gottlob's text, W. E. Lunt made an English translation which he published in his *Papal Revenues in the Middle Ages* ("Records of Civilization, Sources and Studies," No. 19 [2 vols.; New York, 1934]), II, 518.

to one Hugo de Fonte, a notary of Marseilles, in response to Hugo's humble and devout request. Brother Fulk adds that he had granted to Hugo the remission of sins authorized for Crusaders and has admonished him that he must either participate personally in the next general passage or else donate a subsidy in aid of the Holy Land. In view of the very common practice of commuting Crusade vows for money subsidies in the late thirteenth century and the explicit reference to a possible commutation in the document, there is a strong presumption that Hugo's intention was in fact to lay out cash in lieu of personal service as a Crusader.

In addition to the attestation of the taking of the Cross by Hugo de Fonte, there are a number of other documents, both printed and still in manuscript, which contain forms that were used to certify that some individual was entitled to enjoy the *privilegium crucis*. These documents frequently note in passing that the person concerned has taken a vow to go on Crusade and they almost invariably state that he has taken the Cross, but they are not attestations of either the vow or the taking of the Cross as such.⁶

Beyond this, there have also been printed the decidedly unofficial, though certainly not uninteresting, texts of twenty-one Crusade vows of the mid-fifteenth century. These are the vows made at the so-called "Banquet of Vows" held by Philip the Good, Duke of Burgundy, on February 17, 1453, in order to enlist a company for a projected Crusade against the Ottoman Turks. The whole affair is described and the texts

⁶ Thus the *Register* of John Le Romeyn (Archbishop of York, 1286-1296), ed. William Brown ("Surtees Society Publications," Vols. CXXIII, CXXVIII [2 vols.; Durham, 1913-1917]), II, 125, notes under the date March 15, 1293/94, the issuance of letters testimonial for a bishop who has taken the Cross. A much later attestation of this kind, dating from 1462, may be found in the *Litterae Cantuarienses*, ed. J. Brigstocke Sheppard ("Rolls Series" [3 vols.; London, 1887-1889]), III, 239, no. 1051. Similar entries appear with considerable frequency in both episcopal and papal registers during the thirteenth, fourteenth, and fifteenth centuries. Formulas for letters testimonial of this kind can also be found in some abundance—e.g. in the *Summa prosarum dictaminis* and in the *Summa dictaminum* of Ludolf von Hildesheim, both of which are published by Ludwig Rockinger, *Briefsteller und Formelbücher des elften bis vierzehnten Jahrhunderts* (2 vols.; München, 1863-1864; r.p. New York, 1961). Among the unpublished manuscript formularies which I have examined, I have also noted formulas for similar letters especially in the thirteenth-century *Formularium* attributed (incorrectly) to Marinus of Eboli and analyzed by Fritz Schillmann, *Die Formularsammlung des Marinus von Eboli* ("Bibliothek des Preussischen Historischen Instituts in Rom," Vol. XVI [Roma, 1929]); I have used the manuscript text in the Vatican Library (Vat. Lat. 3976), as well as in the fourteenth-century *Formulare audientiae contradictarum*, for which I have used the text in Ms. 142 of St. John's College, Cambridge.

of the Crusade vows are given by Olivier de la Marche in his *Mémoires*.⁷ All of the vows are carefully hedged about with conditions of one sort or another and are generously garnished with escape clauses so that they will not become binding save under certain specific circumstances, but the texts seem nonetheless to represent genuine, if limited, commitments. The stated conditions, however, never did materialize—as the would-be Crusaders may well have expected—and the projected expedition came to nothing.⁸

It is of some interest, therefore, to report the text of a formula which explicitly attests a Crusader's vow and which has recently come to light in a manuscript of the Bayerische Staatsbibliothek at Munich, Clm. 7536, fol. 339^r. The manuscript's provenance is not clear. The catalogue indicates that it came into the former Bavarian Royal Library from the monastery of Indersdorf, but the first folio bears the note: 1644. *Monasterii B.V.M. in Vordenstein*, which is rather disconcerting, as no such monastery is listed by Cottineau in his *Répertoire topo-bibliographique des Abbayes et Prieurés*. In any event, folia 1^{ra}-294^{rb} of the manuscript contain a copy of the *Casus* of Bernardus Parmensis, while the second part (fol. 298^v-374^v), in which our attestation is contained, is a legal formulary. Both portions of the manuscript were apparently written in the late fourteenth century; by good luck the writing of the *Casus* is dated to 1377. Neither the formulary nor the text of the attestation, however, is dated and the two proper names mentioned in the attestation—one *dominus Walbramus plebanus* and a parish church of St. Mary—are not very helpful for purposes of identification either. It is possible, however, that a more extended study of the whole formulary might yield more positive data.⁹

The attestation sets forth the terms of the vow taken, namely, that the principal has promised to proceed to and to visit the Holy Sepulchre in Jerusalem. He has undertaken to do this personally in the next general passage proclaimed by the Holy See. Should he be prevented from fulfilling his promise in person, he will undertake to send another in his place. The language of the instrument indicates that the principal has made a sworn statement of this intention to the person recording the

⁷ Edd. Henri Beaune and J. d'Arbaumont (4 vols.; Paris, 1883-1888), II, 381-394.

⁸ On this episode see the article by Dorothy M. Stuart, "The Banquet of Vows," *History Today*, IV (1954), 748-753. I am grateful to Prof. Pardon E. Tillinghast for calling this article to my attention.

⁹ I should like to record my thanks to Dr. Hans Eberhard Mayer of the "Monumenta Germaniae Historica," who has checked my transcription of the text and made a number of valuable suggestions concerning it.

statement—possibly a Crusade preacher or some such official, but more probably a notary or a chancery official. Accordingly, the instrument continues, *dominus Walbramus*, the rural dean (*plebanus*), has conferred the Cross on him with the proper and customary ceremony.

In several ways this is a much more satisfactory form of record of the Crusader's vow than the one in Guillaume Ferrand's register, inasmuch as this text sets forth the terms of the vow with some precision and is rather more informative about the procedures involved than are any of the previously published texts. It is plain, too, that this text envisions some form of personal Crusade service, either by the principal himself or through a substitute, rather than some kind of money commutation for service. Although it is vexing that this formula cannot be more precisely dated or localized, it appears that it is (for the present at any rate) the most detailed record known concerning the form and substance of the Crusader's vow.¹⁰

Text

München. Bayerische Staatsbibliothek. Clm. 7536, fol. 339^r

In nomine domini amen. Constitutus talis feruore
 <atque> [ms.: feruoreque] deuotionis accensus
 vouit sanctum dominicum / sepulchrum in ierusalem
 pergere et visitare et prestita mihi stipulanti et
 5 recipienti fide vice et nomine / iuramenti promisit
 deuote huiusmodi quidem uotum suum ultramarinum per
 se vel aliam submissam / personam si ipse vouens
 personaliter ire non poterit debite adimplere saltem
 cum proximum / generale ad terram sanctam passagium
 10 per sacrosanctam romanam ecclesiam fuerit ordinatum.
 Obinde / quoque dictus vouens signum sancte crucis
 a domino Walbramo plebano ecclesie parochialis /

¹⁰ One further published text of a Crusade vow has come to my attention since completing this study. The text appears in A. Franz, *Die kirchlichen Benediktionen im Mittelalter* (2 vols.; Freiburg im Breisgau, 1909; r.p. Graz, 1960), II, 304. It is a vow to participate in a Crusade against the Turks and may be dated shortly after 1446. The text printed by Franz is taken from Kremsmünster Ms. 225 and the same formula also appears, with a German translation, in Lambach Ms. 467, a ritual of the year 1500. The formula is short and simple: "Ego promitto deo omnipotenti, beate Marie semper uirgini et omnibus sanctis et uobis, patri, quod iter arripiam bellaturus contra Turcos, impedimento legitimo semoto offerens me deo uiuum siue mortuum amen." To

sancte Marie suscepit et ad eius votiuam *petitionem*
cruce signauit atque signum / *sancte crucis* deseruendum
15 tradidit et dedit sollempnitatibus debitis et consuetis /
adhibendo. Acta sunt hec et cetera. Super quibus.

this the German version in the Lambach Ms. adds a response by the priest or prelate witnessing the vow: "Der almächtig got bestätt das und volfür dein wagnung in ain güt und säligs endt. Amen."

IX

ST. ANSELM, IVO OF CHARTRES, AND THE IDEOLOGY OF THE FIRST CRUSADE

L'auteur examine la manière dont saint Anselme considère la première croisade et l'idéologie qui la sous-tend dans sa correspondance et autres écrits, et aussi celle de son contemporain, le canoniste Yves de Chartres. L'un et l'autre n'ont au mieux manifesté aucun enthousiasme pour la croisade ; occasionnellement, ils se montrent même hostiles à l'entreprise. L'un et l'autre ont tenté de décourager des candidats désireux de rejoindre l'armée des croisés, et tous deux semblent bien partager un certain scepticisme quant à l'utilisation par l'Eglise de la force militaire à des fins spirituelles.

Un examen des textes du *Décret* et de la *Panormia* d'Yves montre que lui, du moins, était familier avec les canons généralement cités pour étayer l'idéologie de croisade ; mieux, la collection canonique d'Yves comporte un grand nombre de canons que Gratien utilisera plus tard comme support de la guerre sainte. Sa réaction négative à la croisade ne reposait en aucune manière sur l'ignorance des fondements idéologiques l'accréditant.

Les textes montrent qu'Yves et Anselme représentent une vision minoritaire de la croisade parmi les auteurs de la fin du XI^e siècle. A l'inverse de la plupart de leurs contemporains, ils considéraient la croisade comme une réponse inadéquate aux problèmes et aux nécessités de la société chrétienne.

Traduit de l'anglais par Raymonde Foreville

St. Anselm's enthusiasm for the first crusade was notable mainly for its absence. Anselm's lack of crusade enthusiasm was shared by another major bishop-scholar of his generation, the great canon lawyer, Ivo of Chartres. The attitudes of Anselm and Ivo toward the crusade are distinctly unusual : most late-eleventh-century Latin writers found the crusade — especially

after it turned out to be a success — a glorious triumph from which they drew both inspiration and consolation. In this paper I shall examine in some detail what Anselm and Ivo had to say about the crusade and, more generally, about the larger themes of holy war and sacred violence.

Anselm and Ivo certainly knew one another personally, for their careers overlapped at several points. Anselm, the elder of the two, was about six or seven years old when Ivo was born, about 1040. Both men lived to approximately the same age — each was about seventy-six years old at death — and both were raised after death to the altars of the Church¹. The two became acquainted as schoolboys at Le Bec, where they both studied under Lanfranc². How much each was influenced by Lanfranc's teaching is, however, difficult to determine.

Their paths diverged in 1062, when Ivo left Bec to become rector of St. Etienne le Vieux at Caen. A series of further appointments and dignities followed : a canonry at Neslé in Picardy, the provostship of the chapter of St.-Quentin in his home city of Beauvais, and finally in 1090, at age fifty, elevation to the See of Chartres. His episcopal election took place in a storm of controversy : Ivo's candidacy was vehemently opposed by his metropolitan, Bishop Richer of Sens, but Ivo had the strong support of Pope Urban II and ultimately prevailed³. He remained Bishop of Chartres until his death in 1116.

Anselm, meanwhile, remained at Bec, first as prior and then, after 1078, as abbot, until he became Archbishop of Canterbury in 1093⁴. The paths of the two men occasionally crossed in later life. They had friends in common, including Prior Ernulf of Canterbury, who studied canon law with Ivo, and Bishop Walo of Paris, another pupil of Ivo and a strong supporter of Anselm⁵. Anselm at one point mediated a dispute between the Countess Adèle of Blois and the Church of Chartres ; in connection with this matter, Anselm visited Chartres, twice during the summer of 1103. He and Ivo certainly saw one another at that time⁶. The two men occasionally corresponded in their adult years, as well⁷.

Ivo became the most celebrated and influential canonist of his generation and exercised a significant influence upon the development of canon law as a distinct intellectual discipline⁸. Ordericus Vitalis with good reason numbered Ivo among the most distinguished scholars of France. A generation later, Gratian drew heavily upon Ivo's canonical collections when he compiled the *Concordia discordantium canonum*, the fundamental text for the teaching of canon law in medieval schools and universities and the basis of much of the practice of the Courts Christian⁹.

In sharp contrast to Ivo, Anselm seems to have been totally disinterested in canon law¹⁰. Although he may perhaps have read a little Roman law, Anselm's indifference to the canonists was profound : he does not even

seem to have consulted the canonistic writings of Lanfranc, his teacher and predecessor as Archbishop of Canterbury¹¹. Anselm's disinterest in canon law seems, in fact, to have been a special case of his more general desinterest in political matters of all kinds. He had rejected the world when he became a monk and he wanted no traffic with secular concerns in later life¹².

Anselm's rejection of the works and pomps of this world also underlies his indifference toward the crusade. He was summoned to the Council of Clermont, where Urban II proclaimed the first crusade, but he did not attend ; instead he sent the monk Boso to represent him¹³. There is reason to believe that Anselm either learned from Boso's report or, perhaps on some later occasion from Urban II himself, about Urban's crusade policies¹⁴. The claim has also been made that Urban conceived of the crusade in part as a missionary endeavor¹⁵. Anselm was certainly on good personal terms with several major leaders of the first crusade, among them Duke Robert Curthose of Normandy, Count Robert of Flanders, Eustace of Boulogne and his two sons, Godfrey and Baldwin of Bouillon ; late in life Anselm met Bohemund of Taranto, the first Latin Prince of Antioch, at Rouen¹⁶.

Nevertheless, Anselm's correspondance with would-be crusaders is markedly negative. Some of his letters to intending crusaders, to be sure, were addressed to monks and Anselm's stern admonitions that they must not take part in the crusade reflected papal policy on the issue, as well as Anselm's own views of the monastic life. Monks, he believed, should not be wandering about, on the road to Jerusalem or anywhere else. He vehemently opposed monastic involvement in any sort of worldly expedition. Monks who enlisted in the crusade, he wrote, were yielding to evil temptations and these would lead them into confusion and damnation¹⁷. But he was scarcely more encouraging in his correspondence with laymen who proposed to join the crusading army. His letters to a knight named William express his views forthrightly. Soldiers, he believed, ought to abandon the worldly *militia*, for service in it was inherently sinful. Instead, he implored William to enlist in the peaceful *militia Christi*, that is to say to become a monk¹⁸. Jerusalem, he remarked in another letter to William, is nowadays not a vision of peace, but of tribulation. The heavenly Jerusalem, which is a vision of peace, will not be found by warriors interested in pillaging the treasures of Constantinople and Babylon with their bloodstained hands¹⁹. In only one case that we know of did Anselm approve of a knight's proposal to enlist in the crusading army — and that was, indeed, a very special case. The knight in question was Burgundio, the husband of Anselm's sister, Richeza. Anselm responded to the news of Burgundio's proposal to go on crusade with a curious letter. He gives his approval, which Burgundio had sought, but hedges it about with cautious advice about the spiritual preparations that Burgundio should make for his

journey. Indeed, the whole tone of the letter is about what one might have expected if Burgundio had announced that he was on his deathbed. Likewise Anselm's words of advice to Richeza sound very much like conventional advice to a new widow. Although Anselm responded positively to Burgundio's proposal, he certainly betrays little enthusiasm for the prospect ; rather he seems to treat it as an affliction which his sister and her husband must learn to bear²⁰.

Negative as he commonly was toward the crusade, Anselm described his veneration for Jerusalem in very positive terms when he wrote to King Baldwin I of Jerusalem. But it is notable that in his letter to Baldwin Anselm completely ignores the crusade, in which Baldwin had served and which had, of course, created the kingdom which Baldwin held. Anselm simply does not mention the circumstances under which Jerusalem had been restored to Christian control, nor does he have anything to say about the continuing traffic of pilgrims and crusaders to Baldwin's kingdom²¹. It seems a strange oversight.

All of this is consistent, however, with the view that Anselm was fundamentally disinterested in political affairs. That he should have little good to say for war is perhaps not surprising. What is astonishing is that he has so little to say in favor of peace. Nowhere does Anselm give serious attention to political peace as a virtue. Where he does discuss peace, he is clearly dealing with the interior and spiritual quality, not with political harmony. Peace, in the political sense, held no significant place in Anselm's view of the world. In the light of that attitude it is scarcely surprising that he largely ignored the crusade and found little to commend in crusading endeavors²².

When we look at the correspondence of Ivo of Chartres, we find that his letters also exude an air of caution and hesitancy when they deal with the crusade. Ivo did not overtly disapprove of the crusade, to be sure ; but one would scarcely expect to find an outright denunciation of the crusade in the work of a man who owed his episcopal see to Pope Urban II²³.

Three of Ivo's letters deal with a case in which crusader privileges were at issue. The case arose about 1107 and centered around a manor (*fundus*) jointly held from the Viscount of Chartres by two tenants, under the protection of the lord of Courville-sur-Eure. A certain Count Rotrou purchased a part of this manor and built a fort on his portion of the property. The viscount, who was about to set out on crusade, protested this action and his protest was supported by the lord of Courville. They brought their case to Ivo's court in first instance because it involved a crusader. Ivo judged, however, that it was a property question which belonged before the secular courts and he therefore declined to assert jurisdiction in the case. The litigants accordingly had recourse to a secular judge ; then, for some unknown reason, they temporarily abandoned the matter. Subsequently the

lord of Courville was captured by Rotrou's servants and imprisoned. A complaint was made to the pope, who remanded it to Ivo for action. Ivo, in turn, referred the case to Archbishop Daimbert of Sens²⁴. One element in the case that troubled Ivo particularly was the pope's instruction that because the affair involved an alleged infraction of crusader privileges, Ivo ought to excommunicate the defendant, Rotrou, without a hearing. This Ivo declined to do, apparently on the grounds either that it was procedurally improper or that it was a violation of natural justice²⁵. Finally, in a lengthy letter to Pope Paschal II, Ivo reviewed the case and in so doing expressed his grave reservations about the privileges accorded to crusaders. He thought that these privileges were vaguely defined — which indeed they were — and, moreover, their very novelty made them suspect in his eyes. Although he avoided directly challenging the pope's right to create a new privileged class of crusaders, Ivo hinted broadly that he found this prospect distasteful and potentially dangerous²⁶. The record of this case makes it plain that Ivo was no whole-hearted supporter of the crusades and, although we do not know the final outcome of the case, it must have become abundantly clear that crusaders in the diocese of Chartres would be rash to expect much support of their privileges from their bishop, no matter what the pope might say. At the very least, Ivo was in this case practicing passive resistance to a policy with which he did not agree.

Several further cases involving crusaders occur in Ivo's correspondence. One of them concerns a certain Raimbald. Upon his return from Jerusalem, Raimbald discovered that during his absence a monk of the Abbey of Bonneville had caused some of Raimbald's servants to be beaten for stealing the monastery's crops. Raimbald, in retaliation, seized the monk and had him castrated. The case came to Ivo, who sentenced Raimbald to do penance for fourteen years. Raimbald appealed — whether on the basis of crusader privileges or not, does not appear — but Ivo refused to modify his judgment. He did, however, agree to accept a pilgrimage to Rome in partial satisfaction of Raimbald's penance with the understanding that Raimbald might use the occasion to petition the pope for relief. The outcome of this case, is unfortunately, unknown²⁷.

Another of Ivo's cases involving crusaders is reported in even sketchier outline. Two crusaders upon their return from the Holy Land discovered that their wives had committed adultery. The crusaders preferred charges and apparently sought annulment of their marriages as a result. Ivo, who judged the case, ruled that the crusaders must take back their wives and be reconciled with them. He also forbade the men to have intercourse with their adulterous spouses²⁸. Crusaders' privileges were not at issue in this case and Ivo's ruling was consistent both with his handling of other adultery cases and with the law as it was set forth in his canonical collections²⁹.

A particularly interesting case involving a participant in the first crusade arose out of the decision of Count Hugh of Troyes to take the cross. Count Hugh consulted Ivo about his plan and received a reply cautioning him to be careful. Vices, Ivo said, sometimes take the guise of virtues and thus deceive the simple-minded. The clear implication is that Ivo considered the crusade an example of such a deceptive virtue. Count Hugh was married, Ivo noted, and he therefore owed his wife the marital debt. He was morally bound, accordingly, not to absent himself without her consent — and her consent must be voluntary, not forced. Ivo advised the count that he must seek his wife's permission to leave on crusade. If she freely gave her consent, then he might go ; otherwise his marital obligations took precedence over his crusading ambitions and he must foresake the crusade and remain with his wife. Otherwise he would violate the natural and legitimate obligations that bound him to his spouse³⁰. Ivo's counsel to Count Hugh was decidedly negative : he accented the dangers and uncertainties of the enterprise and tried to restrain his correspondent from committing himself to an undertaking whose outcome was uncertain and which he had not carefully evaluated from every angle. Ivo was doing, in short, precisely what any prudent lawyer ought to do in advising a client. On the matter of Count Hugh's marital obligations, Ivo's advice was entirely consistent with the policy of Pope Urban II, who explicitly forbade married men to go on crusade unless their wives consented, and also with the canons cited in Ivo's own canonical collections³¹.

Ivo's letters make it clear that his attitude toward the crusade closely resembled that of Anselm. Ivo's letters, like Anselm's, are suffused with doubts, reservations, and suspicion about the crusade. Both men expressed doubts about its spiritual value. Ivo, like Anselm, tended to discourage would-be crusaders and emphasised to them that they had other, more pressing moral and legal obligations to consider. To be sure, Ivo, like Anselm, might occasionally approve of an individual's proposal to undertake the crusade, but this was the exception, not the rule, so far as we can judge from the surviving correspondence of both men³².

In contrast to Anselm, however, Ivo was anything but disinterested in politics and worldly matters, including war. As a canonist, Ivo necessarily had to deal with such matters and in his canonistic writings he developed a reasonably coherent, if not entirely consistent, theory of the relationship between the practice of the Christian religion and the use of violence. The 188 chapters of part ten of Ivo's *Decretum* deal with the legal and moral consequences of violence : voluntary and involuntary homicide, infanticide, suicide, judicial execution, and war, including holy war³³. Some of these texts from Ivo's *Decretum* reappear in his *Panormia*, especially in the eighth book, and Gratian made use of a substantial number of them in his work as well. This is not the place for a full analysis of the complex

relationships between these three groups of texts. I must, however, survey briefly Ivo's canonistic texts where they bear on crusade ideology and, more generally, on the themes of holy war and sacred violence.

Although some of Ivo's authorities taught that both secular and ecclesiastical law forbade the shedding of human blood and, hence, that the use of violence was illicit for Christians³⁴, other canons in Ivo's collections held that the rules governing the legitimate use of violence differed in the Old and New Testaments³⁵. Ivo cited numerous canons which maintained that lawful authorities were legitimately entitled to employ violence. Preeminent among those authorities were judges and kings³⁶. Judges were authorized by God to employ the death penalty³⁷. Their exercise of this power was not "shedding blood"³⁸ and they ought to be praised, not condemned, for using their legitimate powers³⁹. Similarly executioners were morally entitled to practice their craft; so long as they did so in obedience to judicial decisions, they were not guilty of any wrongdoing when they performed their duties⁴⁰. Kings, like judges, were empowered to punish evildoers, Ivo's texts declared, and when they did so they acted as ministers of God Himself⁴¹. Kings possessed lawful power to make war on behalf of the Church or for the protection of their realms⁴². Royal authority to use violence gave legal sanction also to the actions of soldiers who fought under the monarch's command: such men were agents of the king and when they killed enemies under obedience to the orders of a legitimate authority they were not guilty of homicide⁴³. The penalties for murder applied to those who slew others out of wrath or hatred, not to those who killed out of zeal for justice⁴⁴. Ivo cited a substantial number of authorities on the question of when it is permissible for private persons to kill others: self-protection is the principal reason cited to justify the use of deadly force; likewise it was no offense, according to Ivo's authorities, to kill a thief in the night, a pirate, or those who practice cruelty to others⁴⁵.

Ivo cited further authorities — notably St. Augustine — who went far beyond this and who equated lawful coercion with love⁴⁶. Thus the Christian who forces his neighbor to do good and to refrain from evil acts legitimately, even laudably: correcting evil is an act of love and exercising force for this purpose may be the highest virtue of the Christian ethic⁴⁷. Not only is the use of force under such circumstances praiseworthy, according to Ivo's sources, but there is a positive duty, an obligation to correct those who were in error and to use force, if necessary, to accomplish this⁴⁸. Another canon admonished that it is not an act of mercy to pardon those who do evil, for this will only encourage them in their wicked ways⁴⁹; thus it is right and proper for Christians to kill excommunicates, for example, but not the other way around⁵⁰. Moreover, bishops and other clerics have both the right and the obligation to encourage the suppression and coercion of heretics and infidels⁵¹. When Christians undertake war in order to

defend themselves and their faith, they are acting justly and the wars that they fight are pleasing to God⁵². Other authorities whom Ivo cites in his canonical collections gave special attention to the role of the pope as protector of Christ's flock and hence as a warrior, safeguarding the faithful from non-Christian aggressors⁵³. Several canons deal with the exploits of early medieval popes who organized and directed military campaigns against the Muslims⁵⁴. Finally, Ivo's canonical texts also include an excerpt from one papal letter which mentioned the heavenly rewards that those who fought in defense of Christendom might expect to receive from God⁵⁵.

The *Decretum* and *Panormia* of Ivo thus present an impressive body of texts that undergird a theory of sacred violence. The legal ideology underlying the crusade is all there in embryo. A substantial number of the texts on these matters that Gratian would include in *Causa* 23 of his *Concordia discordantium canonum* occur in Ivo's work and that is almost certainly the source from which Gratian borrowed them a generation later⁵⁶.

Ivo was assuredly not ignorant, then, of the canonical basis for the papal proclamation of the crusade and he had in fact assembled many of the pertinent pronouncements in his own canonical collections. It may perhaps be significant that he failed to include any of the statements of his own patron, Pope Urban II, on the subject of crusade, holy war, and sacred violence. It seems a curious omission. In any event, the fact that Ivo was familiar with the canonical basis for the crusade does not necessarily mean that he was in sympathy with the crusade in practice⁵⁷. We have already seen from his letters that he was markedly cool to attempts to assert crusader privileges and that he tended to discourage potential recruits from participating in the crusades, much as St. Anselm did.

Anselm and Ivo, as I pointed out earlier, differed on many matters ; but they also shared a number of characteristics : both were committed to the ideal of Church reform, both suffered misfortunes as a result of their commitment, and both were skilled and crafty fighters for the ideals that they believed in. Neither of them, however, put much stock in physical force as a means of solving problems, either in secular society or, still less, in the Church. Both appear to have been suspicious of attempts by prelates or other churchmen to achieve the Church's goals, however righteous and lofty they might be, by military force. Ivo, at least, was not quite prepared to brand such tactics as sinful or illegal ; presumably if he had been, he would have structured his canonical collections differently. What Anselm thought about this particular problem we must deduce from indirect evidence, but the history of his dealing with the crusade appears to support the belief that on this point he may well have agreed with Ivo. Certainly his fundamental rejection of war as immoral would seem to point to such a conclusion⁵⁸.

It would overstate the case considerably to argue that Anselm and Ivo were pacifists ; but the evidence surveyed here suggests that neither of them considered the use of military force entirely appropriate for spiritual purposes and clearly neither of them could muster great enthusiasm for the crusade. While both of them stopped short of overt criticism of the crusade, their hesitations, reservations, and omissions make it clear that they were at least skeptical about, if not openly hostile to the holy war.

NOTES

1. A. BECKER, « Ivo Bischof von Chartres » in *Lexikon für Theologie und Kirche*, 2d ed., 11 vols. Freiburg i/Br., 1957-67 (cited hereafter as LThK²) 5 : 825-26 ; F.S. SCHMITT, « Anselm von Canterbury » in LThK² 1 : 592-94 ; EADMER, *Life of St. Anselm, Archbishop of Canterbury*, 1.1 ed. and transl. by Sir Richard W. SOUTHERN, London, 1962, p. 3-4 ; Alexandre ABRY, *Yves de Chartres, sa vie et ses ouvrages*, Strasbourg, 1841, p. 3-20 ; Rolf SPRANDEL, *Ivo von Chartres und seine Stellung in der Kirchengeschichte*, Stuttgart, 1962, p. 7.
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9. ORDERICUS VITALIS *Ecclesiastical History* 11. 5, CHIBNALL 6 : 43 ; P. FOURNIER and LE BRAS, *Hist. des collections canoniques en Occident depuis les fausses Décrétales jusqu'au Décret de Gratien*, 2 vols, Paris, 1931-32 (repr. Aalen, 1972) 2 : 55-114.
10. SOUTHERN, *St. Anselm and His Biographer*, p. 124-27.
11. D.P. HENRY, « St. Anselm and Paulus » *Law Quarterly Review* 79 (1963) 30-31.
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13. MILO CRISPINUS, *Vita Bosonis*, PL 150 : 726.
14. *Ep. 410 (Opera omnia*, Schmitt 5 : 355) to a monk of St. Martin de Sées, Anselm counseled that monks must not go on crusade and that those who did so were defying a papal command to the contrary. He added, « Ego praesens adfui quando istam sententiam apostolicus promulgavit ». The *apostolicus* here can scarcely have been any other than Urban II ; we know that this was Urban's policy, for he announced it at the Council of Clermont and subsequently reiterated it in a letter to the people of Bologna on 19 September 1096. See ROBERTUS MONACHUS, *Historia Hierosolimitana* 1. *Rec. des historiens des croisades, Historiens occidentaux* 3 : 729-30 ; Heinrich Hagenmayer, ed., *Epistulae et chartae ad historiam primi belli sacri spectantes*, Innsbruck, 1901 ; (hereafter HEp), p. 137-38 ; J.A. BRUNDAGE, « A Transformed Angel (X 3.3.1) : The Problem of the Crusading Monk », *Studies in Medieval Cistercian History Presented to Jeremiah F. O'Sullivan*, Spencer, Mass., 1971 p. 55-62.
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19. ANSELM, *Ep.* 2. 19 (PL 158 : 1167).
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24. IVO, *Ep.* 168 (PL 162 : 170-72).
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26. IVO, *Ep.* 173 (PL 162 : 176-77) ; SPRANDEL, *Ivo von Chartres*, p. 192.
27. IVO, *Ep.* 135 (PL 162 : 144-45).
28. IVO, *Ep.* 125 (PL 162 : 137-38).
29. IVO, *Ep.* 205, 249 (PL 162 : 210-11, 255) ; IVO *Decretum* 8. 230, 235-36, 239, 242-43 (PL 161 : 633-37).
30. IVO, *Ep.* 245 (PL 162 : 251-53). On the doctrine of marital debt see E.M. MAKOWSKI, « The Conjugal Debt and Medieval Canon Law » ; *Journal of Medieval History* 3 (1977) 99-114.
31. HEp p. 138 ; IVO, *Decretum* 8.98 (PL 161 : 604 = *Panormia* 7. 47-48 (PL 161 : 1291-92) = Gratian, *Concordia discordantium canonum* C. 33 q. 5c. 11 *Manifestum* and c. 16 *Noluit* (Corpus Juris Canonici I, ed. Friedberg, Leipzig, 1879) ; *Decretum* 8. 73 (PL 161 : 599) = Gratian C. 32 q. 8 c. *un. Non solum* ; *Decretum* 8. 133 (PL 161 : 613) = Gratian C. 33 q. 4 c. 12 *Apostolus* ; *Decretum* 8. 134 (PL 161 : 613) = Gratian C. 33 q. 5 c. 6 *Una sola* ; and *Decretum* 8. 136 (PL 161 : 614) = *Panormia* 6. 80 (PL 161 : 1260) = Gratian C. 33 q. 5 c. 4 *Quod Deo*. See also J.A. BRUNDAGE, « The Crusader's Wife : A Canonistic Quandary » *Studia Gratiana* 12 (1967) 429-31.
32. For an instance in which Ivo facilitated a crusader's journey, see his *Ep.* 93 (PL 162 : 113-14), which can be dated between 1100 and 1102 ; SPRANDEL, *Ivo von Chartres*, p. 190. The *peregrini* referred to in this letter are more likely than not crusaders, rather than simple pilgrims, although the term is used interchangeably at this period to describe either sort of traveller ; see BRUNDAGE, *Medieval Canon Law and the Crusader* Madison, 1969, p. 30-31.
33. PL 161 : 689-746.
34. IVO, *Decretum* 10. 1 (PL 161 : 689-91) = *Panormia* 8. 1 (PL 161 1303-5) = Gratian C. 23 q. 5 c. 8 *De occidendis* ; also *Panormia* 8. 4 (PL 161 : 1306).
35. *Panormia* 8. 24 (PL 161 : 1310).
36. IVO, *Decretum* 10. 80 (PL 161 : 718) = *Panormia* 8. 26 (PL 161 : 1311) = Gratian C. 23 q. 3 c. 3 *Nostri* ; *Decretum* 10. 93 (PL 161 : 721) = *Panormia* 8. 37 (PL 161 : 1313) = Gratian C. 23 q. 8 c. 15 *Si nulla* = JL 2812 : cf. Also IVO, *Ep.* 90 (PL 162 : 111-12).
37. IVO, *Decretum* 10. 11 (PL 161 : 693) = *Panormia* 8. 5 (PL 161 : 1305-6) = Gratian C. 23 q. 5 c. 39 *Sunt quaedam* ; *Decretum* 10. 41 (PL 161 : 702) and 10. 78 (PL 161 : 717-18) = *Panormia* 8. 23 (PL 161 : 1310).
38. IVO, *Decretum* 10. 115 (PL 161 : 726-27) = *Panormia* 8. 52, 53 (PL 161 : 1315) = Gratian C. 23 q. 5 c. 30, 31 *Judex* and *Homicidas*.

39. Ivo, *Decretum* 10. 75 (PL 161 : 714-17).
40. Ivo, *Decretum* 10. 103 (PL 161 : 724) = *Panormia* 8. 39 (PL 161 : 1313) = Gratian C. 23 q. 5 c. 14 *Cum minister* ; *Decretum* 10. 104 (PL 161 : 724) = *Panormia* 8. 24 (PL 161 : 1313) ; *Decretum* 10. 106 (PL 161 : 724) = *Panormia* 8. 40 (PL 161 : 1313) = Gratian C. 23 q. 5 c. 16 *Offitia*.
41. Ivo, *Decretum* 10. 96 (PL 161 : 721) = *Panormia* 8. 33 (PL 161 : 1312) = Gratian C. 23 q. 5 c. 40 *Rex debet* ; *Decretum* 10. 117 (PL 161 : 727) = *Panormia* 8. 55 (PL 161 : 1316) ; *Decretum* 10. 111 (PL 161 : 726) = *Panormia* 8. 48 (PL 161 : 1315) = Gratian C. 23 q. / c. 27 *Non solum* ; *Decretum* 10. 114 (PL 161 : 726) = *Panormia* 8. 51 (PL 161 : 1315) = Gratian C. 23 q. 5 c. 29 *Qui malos*.
42. Ivo, *Decretum* 10. 99 (PL 161 : 722) = Gratian C. 23 q. 4 c. 39 *Quando vult* ; *Decretum* 10. 97 (PL 161 : 721) = *Panormia* 8. 34 (PL 161 : 1312) = Gratian C. 23 q. 3 c. 5 *Fortitudo*.
43. Ivo, *Decretum* 10. 98 (PL 161 : 721-22) = *Panormia* 8. 35 (PL 161 : 1312) = Gratian C. 23 q. 5 c. 13 *Miles* ; *Decretum* 10. 107 (PL 161 : 724) = *Panormia* 8. 42 (PL 161 : 1313-14) = Gratian C. 23 q. 5 c. 17 *Non est iniquitatis* ; *Decretum* 10. 124 (PL 161 : 728) = Gratian D. 53 c. 1 *Legem* = JL 1497 ; *Decretum* 10. 125 (PL 161 : 728) = *Panormia* 8. 60 (PL 161 : 1316-17) = Gratian C. 23 q. 1 c. 5 *Militare* ; *Decretum* 10. 126 (PL 161 : 729) = Gratian C. 23 q. 1 c. 3 *Noli existimare*.
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45. Ivo, *Decretum* 10. 101 (PL 161 : 722-23) = *Panormia* 8. 38 (PL 161 : 1313) = Gratian C. 23 q. 5 c. 41 *Si homicidium* ; *Decretum* 10. 65 (PL 161 : 711) = *Panormia* 8. 18 (PL 161 : 1309) = Gratian C. 23 q. 8 c. 14 *Occidit* ; *Decretum* 10. 118 (PL 161 : 727) = *Panormia* 8. 56 (PL 161 : 1316) = Gratian D. 1 c. 7 *Jus naturale* ; *Decretum* 10. 67 (PL 161 : 711) = *Panormia* 8. 19 (PL 161 : 1309) = Gratian C. 23 q. 8 c. 16 *Petrus* ; *Decretum* 10. 53 (PL 161 : 706) ; *Decretum* 10. 113 (PL 161 : 726) = *Panormia* 8. 50 (PL 161 : 1315) = Gratian C. 23 q. 3 c. 6 *Si quis fortitudinem* ; *Decretum* 10. 112 (PL 161 : 726) = *Panormia* 8. 49 (PL 161 : 1315) = Gratian C. 23 q. 5 c. 28 *Non est crudelis*.
46. Ivo, *Decretum* 10. 62 (PL 161 : 710) = *Panormia* 8. 16 (PL 161 : 1308-9) = Gratian C. 23 q. 4 c. 53 *Debet homo* ; *Panormia* 8. 17 (PL 161 : 1309) = Gratian C. 23 q. 4 c. 28 *Displicet tibi*. On this and related ideas see also Jonathan RILEY-SMITH, « Crusading as an Act of Love » *History* 65 (1980) 177-92.
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48. Ivo, *Decretum* 10. 70 (PL 161 : 712) = *Panormia* 8. 20 (PL 161 : 1309-10) = Gratian C. 23 q. 8 c. 12 *Praeterea* = JL 2998 ; *Decretum* 10. 77 (PL 161 : 717) = Gratian C. 23 q. 5 c. 37 *Non est innocentiae*.
49. Ivo, *Decretum* 10. 79 (PL 161 : 718) = *Panormia* 8. 25 (PL 161 : 1310-11) = Gratian C. 23 q. 5 c. 38 *Qui vitiis*.
50. Ivo, *Decretum* 10. 54 (PL 161 : 706) = *Panormia* 8. 11 (PL 161 : 1308) = Gratian C. 23 q. 5 c. 47 *Excommunicatorum* = JL 5536 ; *Decretum* 10. 59 (PL 161 : 707-9) = C. 23 q. 5 c. 4 *Quis enim nostrum* ; *Decretum* 10. 61 (PL 161 : 710) = *Panormia* 8. 15 (PL 161 : 1307-8) = Gratian C. 23 q. 4 c. 52 *Quisquis Christianus*.
51. Ivo, *Decretum* 10. 73-74 (PL 161 : 713-14) ; *Panormia* 8. 2 (PL 161 : 1305-6).
52. Ivo, *Decretum* 10. 105 (PL 161 : 724) = Gratian C. 23 q. 1 c. 6 *Apud veros* ; *Decretum* 10. 110 (PL 161 : 725-26) = *Panormia* 8. 44 (PL 161 : 1314) = Gratian C. 23 q. 4 c. 36 *Ille gladium* ; *Decretum* 10. 116 (PL 161 : 727) = *Panormia* 8. 54 (PL 161 : 1315) = C. 23 q. 2 c. 1 *Iustum est* ; *Panormia* 8. 45 (PL 161 : 1314) = C. 23 q. 1 c. 4 *Quid culpat* ; *Panormia*

8. 46 (PL 161 : 1314) ; *Panormia* 8. 47 (PL 161 : 1314-15) = C. 23 q. 1 c. 4 *Quid culpatur Ergo vir iustus* ; *Decretum* 10. 119 (PL 161 : 727) = *Panormia* 8. 57 (PL 161 : 1316) = C. 23 q. 2 c. 3 *Notandum* ; *Decretum* 10. 20 (PL 161 : 727) = *Panormia* 8. 58 (PL 161 : 1316) = C. 23 q. 3 c. 7 *Non inferenda*.

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55. Ivo, *Decretum* 10. 87 (PL 161 : 719-20) = *Panormia* 8. 30 (PL 161 : 1311) = Gratian C. 23 q. 8 c. 9 *Omni timore* = JL 2642.

56. On these themes see particularly F.H. RUSSELL, *The Just War in the Middle Ages*, Cambridge, 1975, p. 16-85 ; but note also the review by K.J. PENNINGTON, *Canadian Journal of History* II (1977) 367-70, as well as James A. BRUNDAGE, « Holy War and the Medieval Lawyers » in *The Holy War*, ed. Th. P. Murphy, Columbus, Ohio, 1976 p. 99-140.

57. SPRANDEL, *Ivo von Chartres*, p. 161.

58. C. ERDMANN, *The Origin of the Idea of Crusade*, rev. and transl. by M.W. BALDWIN and GOFFART, Princeton, 1977, p. 271.

Holy War and the Medieval Lawyers

Violence has always been a problem for human societies. Western European societies, which have traditionally identified themselves as Christian, tend to find this problem especially vexing. The Christian ethic, after all, gives particular prominence in its value system to love of one's neighbor, and violent behavior is the very antithesis of the virtue of love. Yet both private mayhem and organized public hostilities have continued to erupt in Western European societies. This fact presents a notable difficulty for Christian thinkers and writers, who have commonly felt a need to try to reconcile the violent, warring actions of men, including Christian men, with the theological values they profess.

War represents the ultimate degree of organized violence between communities. War has, accordingly, always been a thorny subject for Christian writers and the Church's attitude has been markedly ambivalent on this subject. Despite their pacific ideals, Christian moralists and theologians were compelled to recognize that war was a fact of life. During the Middle Ages, Western intellectuals began to analyze in some detail the various aspects of war. Their treatments of the subject became increasingly sophisticated during the years between about 1000 and 1300. Out of the discussions of war in this period there emerged a fundamental

transformation of the way in which the problem was treated. This change involved a transition from a consideration of war as primarily a moral and theological problem to a conception of war as fundamentally a problem of law. Likewise, as the Church's enforcement powers increased, theological moralizing tended to be replaced by a more rigorous categorization of hostile action.

One result of this transition from theological-moralistic thinking about war to a legal treatment of these activities was a change in the kinds of problems that were addressed. There was considerable overlap, of course. Both theologians and lawyers were concerned about such matters as whether a given war was just or unjust, licit or illicit. But they tended to be interested in these questions for different reasons and to judge them by different criteria. Both groups needed to deal with the problem of who has the power to declare war, but again they did so for rather different reasons and might arrive at differing conclusions. Other problems were far more central to the concerns of lawyers than of theologians—questions of property rights, for example, questions about liability for damage resulting from war, the legitimacy of conquest, its implications for possessory and jurisdictional rights.

Finally, there emerged the concept of holy war, of war that was not merely justifiable but justifying and spiritually beneficial to those who participated in it. This category was certainly theological in its basis; but this category, too, was transformed during the high Middle Ages into a fundamentally legal concern, with a resulting change in emphasis.

In order to make sense out of the ways in which medieval writers dealt with holy war, it is necessary to look first at the problem of war and its place in the juridical structure, as medieval lawyers saw it. We must begin by saying something, however brief and superficial, about the theological background and its scriptural basis. Medieval thinkers were, of course, aware that the Old Testament dealt rather ambiguously with war. Some passages in the Scriptures treated war as an evil, as a punishment inflicted upon the people of Israel for their sins.¹ But other Scriptural texts spoke of war in much more positive terms. They described God as the author of

victory in war, victory which Yahweh granted to His people when He was pleased with them.² God accompanied the Israelites' army, watched over it, and, when not otherwise engaged, might even serve as its commanding officer, in conjunction with His priests.³

The treatment of war and violence in the New Testament was even more ambivalent and medieval writers were aware of this inconsistency. If Saint Paul spoke, in standard Old Testament fashion, of the Lord as the author of victory,⁴ he also spoke of Him as a God of peace.⁵ Even more emphatic in the new dispensation than in the old, was an aversion to violence: "Those who take the sword will perish by the sword" are words attributed to Jesus.⁶ Still more pointedly, Jesus was represented in Saint Matthew's Gospel as repudiating the approval given in the Old Testament to strong-armed resistance to aggressors. The Mosaic Law had accepted resistance and retaliation as appropriate responses to attack;⁷ the Gospel rejected this conduct and proposed instead the ethic of nonresistance.⁸ The Christian, it might seem, was obliged not to repay evil with evil, violence with violence; rather he was expected to overcome evil with good, to counter force with love.⁹ Thus it might appear that Christianity from the outset was opposed to works of violence, that no Christian could with propriety dedicate himself to military affairs. Against this background it might seem that the concept of a holy war, sanctioned and supported by the Christian Church, must be an absurdity.¹⁰

Yet things are not so simple as they might at first glance appear. Historically it is clear from the evidence of Tertullian (ca. 160–ca. 250) and other early authors, that numerous Christians did in fact serve in the ranks of the Roman army and that pacifism was by no means a universally accepted stance in early Christian communities.¹¹ The words of Christian writers echoed the actions of Christian believers. The Fathers of the Western Church, at least by the fifth century, had begun to face up to the ambivalence of the Scriptures on the matter of violence and were trying to rationalize the apparent contradictions that they found. In this process, as in many others, the voice of Saint Augustine (354–430) was especially prominent.

Augustine conceived of God as the author of wars, or at least of some wars.¹² Augustine was, moreover, persuaded that righteous men were sometimes forced to wage war as a result of the wrongdoing of the wicked.¹³ All wars, in Augustine's view, were fought in order to secure peace.¹⁴ Hence the peaceful objectives of a war were not adequate criteria to determine whether or not a particular war was morally acceptable. Rather, in order to make a judgment as to the morality of a particular war one must, according to Augustine, consider the circumstances of the war's origin together with the motives and the moral authority of the combatants.

Augustine, then, distinguished between just wars and unjust wars. This distinction was not, to be sure, very novel. It can be found, for example, in Cicero.¹⁵ But in Roman thought the term "just war" tended to have as much ceremonial as moral content. A *bellum iustum et pium* was a war that had been properly declared, with full observance of the appropriate public ceremonies and religious rites.¹⁶ Still, the Roman concept of just war was not utterly devoid of moral content: *aequitas* required that a just war have a just cause. This normally meant a violation of Rome's legal interests in foreign territories, infringement on Roman territory itself by foreign powers, or disrespect for the immunities of Rome's allies or her representatives on alien soil.¹⁷ Augustine's notion, however, went beyond such considerations as these. Although he adopted Cicero's terminology and the basic notion that *aequitas* distinguished just wars from unjust ones, Augustine analyzed the justice of war in terms of four basic criteria. There must be a declaration of war by a legitimate authority; there must be a reasonable and morally acceptable cause for the war; the war must be necessary, that is, there must be no other way of achieving the legitimate objective; and the war must be fought by acceptable means.¹⁸

From the fifth century onward Augustine's views shaped the basic attitude of most Christian thinkers toward organized public conflict.¹⁹ The Augustinian analysis, often in a somewhat simplified form, provided the matrix for the treatment of war by medieval canon lawyers. But one thing Augustine did not give us

precisely was a doctrine of holy war. It is one thing to deal with just war, with war that is morally tolerable and not reprehensible in itself; it is quite another and distinct matter to take the further step of conceiving of war as sanctifying, and as an activity that actually confers spiritual merit on the warrior.

The history of the Christian doctrine of holy war is complex; numerous strands, often of strongly clashing colors, are woven into its fabric. It is not necessary to untangle all of those strands here; but it will be useful at least to mention some of them in passing.²⁰

There is, for one thing, a suggestive parallel between Christian holy war and the Muslim *jihād*.²¹ No one to date has been able to demonstrate a direct influence of the one upon the other. There is, in fact, a good argument to be made that what they really have in common with each other is a common root in more ancient ideas.²²

Certainly, too, early medieval Christian wars against pagans, both in the Carolingian period and later, were a factor in the development of holy war ideology in the West. The expansionist wars of Carolingian and Ottonian monarchs, activities in which bishops and other prelates often figured prominently, were accompanied by the conversion of conquered populations to Christianity. The role of churchmen in these wars and the conversions that resulted from them led to an association of war with salvation; and military success was naturally ascribed to God's pleasure in seeing the number of the faithful increased.²³ Warfare, indeed, became a Christian duty for bishops in Ottonian Germany, and there was a strong inclination to take the further step of pronouncing participation in warfare as spiritually meritorious—provided, of course, that the war was just.²⁴

In part, too, one can trace the roots of the holy war idea to a Christian transformation of more ancient German heroic traditions. As a newly converted Christian society gradually remodeled its older values into new forms, the pagan husks of the older heroic tradition were soon enough discarded and new, Christian outer wrappings substituted for the old ones.²⁵

One striking example of this transformation may be found in the liturgical evidence.²⁶ In the tenth century, when the Church began

to bless knights and their weapons, in order to consecrate them to the defense of true religion and ecclesiastical possessions, Christian society was clearly shifting its attitude toward giving a more positive value to warfare and to the warrior in the scheme of salvation. All this was not quite the same as saying that war was holy and sanctifying; still it was not a startling leap from the notion that weapons (at least when destined for proper use) should be blessed and that their users (at least in principle) were consecrated persons to the further notion that the activities in which the consecrated warriors employed their blessed weapons were themselves pleasing in the sight of God.²⁷ By the eleventh century Christian warriors who worried about the salvation of their souls could avail themselves of another reassurance: under certain conditions they might march into battle under a sacred banner, blessed by the Church. The banner symbolized the justness of their cause and evidenced ecclesiastical approval of the warriors' martial activities often at the exalted level of Saint Peter's successor in Rome.²⁸ It was only a short further step from fighting under the banner of Saint Peter to fighting with a Crusader's cross sewn on one's cloak.²⁹

The papacy itself was not directly involved in the active organization and direction of armies until the ninth century, when it faced the problem of defending its territories from attacks by Muslim invaders in central Italy.³⁰ The really radical change in papal policy toward warfare, however, occurred during the reign of that most warlike of pontiffs, Pope Gregory VII (1073–85).³¹ It has been argued, with considerable justice, that Gregory VII revolutionized the Christian view of warfare and that he was the principal inventor of the holy war idea in medieval Christendom.³² Gregory demonstrated his passion for sanctifying the grubby business of organized fighting on several different levels. In the realm of political theology and political rhetoric, there is much to be learned from his use of the metaphor of the sword.³³ In the more immediate and practical realm of action, one can also learn much from a study of his concept of the Christian army and the Christian knight.³⁴

What is more to the point here, Gregory seems to have entertained the notion that those who died in battle on behalf of right-

eousness were automatically and deservedly freed from their sins.³⁵ Other popes before Gregory VII had spoken in roughly similar terms—notably Pope Leo IV in 853,³⁶ Pope John VIII in 878,³⁷ Pope Leo IX in 1053,³⁸ and Pope Alexander II in 1063.³⁹ Gregory VII's pontificate gave a new twist to the older idea that soldiers dying in battle for a just cause might thereby be saved. Whereas his predecessors had spoken primarily of defensive situations, of encounters in which Christian soldiers were defending persons and property against hostile incursions by non-Christians, Gregory carried the notion of justification by war into situations where active expansion of the Christian world and aggressive activities on behalf of papal interests were at issue.⁴⁰ Moreover, the notion of warfare as a holy activity was markedly more prominent in Gregory's thought and actions than it was in the works and words of earlier popes.

Gregory VII has been described, with justice, as one of the forefathers of the Crusade, which embodied the holy war in its most characteristic medieval form. Certainly by the time that Urban II (1088–99) inaugurated the First Crusade at Clermont in 1095, the holy war was well on its way to becoming a fixture of papal policy and religious discourse in the West. Urban II's primary contribution was to bring together a number of accepted and relatively popular ideas in a new form, one that had the good fortune to achieve a spectacular and impressive success. This new institutional entity was the Crusade.⁴¹

By the pontificate of Urban II Western churchmen had in principle embraced the concept of holy war and viewed warfare as a positive value in the Christian life. "Such is the history of society," wrote Cardinal Newman, "it begins in the poet and ends in the policeman."⁴² And one might paraphrase his observation by saying that the history of the medieval Church begins in the Gospel and ends in the Military Orders.⁴³

But what of the lawyers, especially the canon lawyers, in all of this? Certainly it would be true to say that they played a role in it; but prior to the time of Gratian (fl. ca. 1140) theirs was a subordinate role. Before Gratian, canon law was not a science, certainly,

nor even a very consciously defined discipline.⁴⁴ It was not clearly distinguished or distinguishable from moral theology. The growth of canon law as a distinct instrumentality in the life of the Western Church was largely a twelfth-century development.

Still, there were canonists before Gratian, and some of them had dealt with the problem of warfare and its relationship to Christian life. Anselm of Lucca (+1086), for one, devoted the thirteenth book of his *Collectio canonum* to the theme of violence and the use of coercive force by the Church.⁴⁵ And the great Ivo of Chartres (+1116), writing just at the time when Urban II was launching the First Crusade, dedicated one book in each of his major canonistic collections to the problem of Christian violence and warfare.⁴⁶

Although these earlier canonists played a part in the process, it is hard to escape the conclusion that Gratian did much more than any of his predecessors to transform the law of war into an ecclesiastical institution.⁴⁷ In Causa 23 of his *Decretum*, Gratian examined in detail the whole problem of violence and Christian life. In this context, he dealt with war as a particular species of violence.⁴⁸ Throughout his treatment he employed the familiar metaphor of the sword to express the general concept of coercive force. Two swords were in play: the spiritual sword and the material sword. These metaphorical swords, however, did not stand for "Church" and "State." Rather, they stood for two different kinds of coercive force—spiritual coercion (i.e., interdict, excommunication, and other spiritual penalties that might be employed against the offender) and material coercion (i.e., physical force and violence). The Church, according to Gratian, had the right to use both swords when necessary to secure obedience to legitimate commands.⁴⁹ It is clear that when Gratian spoke of the Church's right to use material coercion, he meant that the Church had the right to employ physical force, including the right to kill or to mutilate the offender, in the exercise of its functions.⁵⁰ The use of physical force by the Church, however, was subject to one significant limitation: violence was not to be employed directly and immediately by clerics; rather it was employed indirectly and mediately, through the agency of laymen.⁵¹

Within this general theoretical context, then, let us examine Gratian's treatment of war. In *Causa* 23, in his usual fashion, Gratian outlined a basic situation, from which he then isolated a series of specific questions for discussion. The situation described in this *Causa* is one in which some heretical bishops have been using threats and force to compel the faithful roundabout to embrace their heresies. The pope, in turn, has commanded the other bishops of the vicinity to defend the faithful from the wayward shepherds and their helpers and to compel the heretics to return to the Catholic fold. The obedient bishops thereupon assembled soldiers to do battle with the heretical forces. In the fighting some of the heretics were slain, others jailed and imprisoned; and thus they were forced to return to the unity of the Catholic faith.⁵²

Given this situation, Gratian then posed eight questions, which he discussed in the light of the canonical sources: Is it sinful to make war? What is a just war? Should one use arms to ward off injuries done to others? Ought one to take revenge? Is it sinful for judges and other officials to kill guilty persons? Ought evil persons be forced to be good? Should heretics be despoiled of their goods? Do those who take the goods of heretics in fact take the possessions of other people? Can bishops or clerics take up arms on their own authority or on that of the pope or the emperor?

From Gratian's discussion of these questions and from the welter of authorities whom he cited, I should like to abstract four themes for comment here: first, the treatment of the evils of war and its sinfulness; next, the problem of the salvation of soldiers; third, the justifications for war; and finally, Gratian's approach to war as a legal category.

As to the first of these, Gratian's treatment of the sinfulness of war, it may be thought that in some sense Gratian was setting up a straw man, destined from the beginning for demolition. I am not wholly persuaded that this was so. At the least, Gratian's arguments for the proposition that war is morally wrong and not to be tolerated in a Christian society represented very fairly a continuing viewpoint among Christians. He cited the scriptural authorities for a nonviolent position, and he developed with some vigor the argu-

ment that the practice of war and violence is foreign both to the spirit and the explicit teaching of the Gospels.⁵³ Further, he cited a passage from Origen (although he attributed it wrongly to "Gregory") to show that various Old Testament passages that seem to condone war and physical violence ought to be interpreted in a Christian context as referring to spiritual struggles.⁵⁴ In short, although Gratian finally rejected the position that war is inherently sinful and wholly incompatible with Christian values,⁵⁵ he did report that position and gave it a reasonable presentation in the *Decretum*. Gratian, to put it another way, was fully conscious of the arguments that Christians should reject war, and he rejected that position consciously.

Next, Gratian held that it was no sin for a Christian to serve as a soldier. For this position he found support among the Fathers of the Church, principally from Saint Augustine.⁵⁶ There was a significant reservation in Gratian's thought on this matter, however: for Gratian distinguished between those who fight and kill on their own authority, which he thought wrong, and those who do so on the command of public authority, which he thought allowable.⁵⁷ This distinction was both basic and important. By introducing the notion of public authority into the discussion, Gratian really transformed his treatment of war into legal, rather than moral, categories. Public authority, to be sure, was not the only factor involved in distinguishing the righteous war from the unrighteous. A just war must be fought for a good reason, to serve just and proper ends,⁵⁸ in addition to having the sanction of legitimate public authority. Given these necessary conditions, there emerged in Gratian's treatment a Christian obligation to fight under certain circumstances. Wars are fought by Christians in order to protect the good and repress the evil, according to Gratian's doctrine; thus those who fail to oppose evildoers are in fact their helpers.⁵⁹ The man who did not help to put down the unjust and to protect the righteous was in effect consenting to evil and rejecting the good. So there were some circumstances, according to Gratian, where the Christian had a positive duty to engage in war.⁶⁰

For Gratian, that war was just which was fought by sanction of rightful authority. But he also taught that wars to redress wrongs

were just and he implied that this was true whether they were proclaimed by public authority or not.⁶¹ He cited some precedents, too, in order to make his meaning clear: as for example a war fought in order to maintain a right-of-way,⁶² a war fought to protect the faithful against heretics,⁶³ a war fought to protect one's homeland against barbarians,⁶⁴ and a war fought to ward off robbers and pirates.⁶⁵

This in turn led Gratian to a discussion of property rights in war. He concluded his discussion of this topic by determining that property captured and appropriated in a just war was rightfully taken and that title to it legitimately passed to the victor.⁶⁶

It is reasonably clear, I think, that Gratian took the moral-theological category of the just war, as it had previously been treated by theologians, and transformed it into a judicial institution. He defined the circumstances under which war was just and lawful. Then he added the further basic premise that only a just war resulted in legitimate legal consequences. Rights to tangible property and intangible rights might both be won in a just war, but not in an unjust war.

Both the criteria and the consequences of this legal category of the just war were explored and developed more fully by Gratian's successors. A few of the decretists who commented on the *Decretum* chose not to deal with Gratian's treatment of war, or did so very scantily,⁶⁷ but most of them gave the subject full-scale treatment, as befitted a matter of continuing practical importance.⁶⁸ In the decades following Gratian there gradually took shape as well a body of new law, mainly derived from papal decisions in specific cases, but stemming partly also from the decrees of the great twelfth- and thirteenth-century councils. The treatment of war in this new law, and in the writings of the decretalists who commented on it, extended and refined, but did not supersede, the fundamental principles set down in Gratian's *Decretum*.

This canonistic literature is enormous; the portions of it dealing with warfare alone are very sizeable, and I do not propose to make anything like a complete survey of all of it here.⁶⁹ It will be worthwhile, however, to take a brief look at some of this literature in order to understand how the holy war fit into the lawyers'

analysis of warfare as a whole. There are four topics I should like to touch on, before coming to grips with the lawyers' views on holy war. These topics are: (1) the authority to initiate war; (2) the power to wage war; (3) limitations on armed conflict; and (4) property rights and liability for damages suffered as a result of hostilities.

As to the first of these topics, the basic rule laid down in the *Decretum* was followed by subsequent generations of legal writers: namely that a legitimate public authority must declare a war, since to kill a person without public authority was homicide.⁷⁰ Thus it was not a substantial question for the canonists whether a public authority was required. What did trouble them and what they did disagree about was the question of whether or not the pope and the bishops were public authorities entitled to declare war. Paucapalea (fl. 1140–48), the earliest of Gratian's pupils to write a *Summa* on the *Decretum*, thought that no cleric, not even the pope, had the right to initiate a war. He did concede that the clergy could properly exhort princes and secular rulers to take up arms in order to defend the oppressed or to resist the machinations of God's enemies.⁷¹ Rolandus Bandinelli (who later reigned as Pope Alexander III, 1159–81) likewise held that clerics, since they were prohibited from fighting in wars, also lacked the power to declare war.⁷² A later generation of decretists, however, was not so certain of this point as the early commentators had been. Huguccio, writing about 1188 or 1190, was at least willing to admit that there was some point to an argument that justified the declaration of war by ecclesiastical judges.⁷³ The *glossa ordinaria* to the *Decretum* (first compiled by Johannes Teutonicus between 1215 and 1217; later edited by Bartholomaeus Brixiensis ca. 1245) adopted the position that ecclesiastical princes had the power to declare war.⁷⁴

One of the more interesting and original commentators on this matter was Pope Innocent IV, who wrote his *Apparatus* on the *Liber Extra* amid the crises and distractions of his pontificate (1243–54). In his opinion, clerics as a general rule were forbidden to declare war and would be subject to ecclesiastical penalties if they did so.⁷⁵ But there were important exceptions to this generalization. Clerics could properly initiate a defensive war, for one

thing; and they could likewise declare war in order to recover their possessions from an illegal taker.⁷⁶ Further, Innocent believed that bishops who held territorial jurisdiction could undertake wars to protect that jurisdiction, although they could not personally participate in the prosecution of such a war.⁷⁷ Hostiensis (+1271), another great thirteenth-century canonist, agreed in large part with the positions taken on this question by Innocent IV,⁷⁸ but added one further observation that is particularly significant for our purposes here. Ecclesiastical authorities, said Hostiensis, could properly declare war against the enemies of the Christian faith and against those who attacked the Church or rebelled against it.⁷⁹

It is worth noting, too, that Gulielmus Durantis (1237–96), writing shortly after Hostiensis, taught that when the cause of a war arose out of a matter falling under ecclesiastical jurisdiction, any ecclesiastical judge had a right to declare war. Otherwise, he thought, such jurisdiction would be delusory.⁸⁰

The power to wage war is closely linked with the power to declare war, and the canonistic writers reflected this connection. From quite early times, ecclesiastical regulations provided that the shedding of blood, even in a just war, constituted an impediment to the reception of holy orders and forbade clerics to use weapons, even in self-defense.⁸¹ Gratian's *Decretum* incorporated these viewpoints. Priests should be concerned with the law, not with war, according to one of the canons,⁸² and when force was required for the protection of the Church and its interests, then recourse should be had to the secular power for defense.⁸³ Bishops and other clerics might, under some circumstances, accompany an army, but their role was to assist it with prayers and spiritual aids, not to fight in its ranks.⁸⁴

Later legal writers sometimes qualified this stance. Rolandus Bandinelli, for example, admitted that there was a case to be made for clergymen bearing arms, but concluded that it was always illicit for priests to do military service. Clerics in minor orders, however, could, in his opinion, wage war if commanded so to do by a prince or by the pope.⁸⁵ Rufinus (+ before 1192) strongly disagreed. "Some of our predecessors," he wrote, "have tried to distinguish,

more drunkenly than soberly, which clerics can take up arms and which cannot." As for himself, Rufinus wanted no part of such dangerous casuistry. No cleric of any kind, in his view, should fight in a war. To this he admitted two possible exceptions: a cleric might, under most extraordinary circumstances, fight to defend himself when required by necessity, which knows no law; and clerics might conceivably fight against pagans on the orders of a superior.⁸⁶ Although other decretists—the anonymous authors of the *Summa Parisiensis* and the *Summa 'Elegantius'*, as well as Sicard of Cremona (+1215), for example⁸⁷—agreed in principle with Rufinus, they expressed their views less pungently. Huguccio was inclined to join Rolandus in distinguishing the question, but on different grounds. Clerics, Huguccio thought, could legitimately accompany an army and they could bear weapons, but only defensive weapons: shields, helmets, body armor, and the like. It was wrong for them to employ offensive weapons—lances, swords, bows and arrows—and if they did so they could be punished.⁸⁸ One anonymous glossator thought, on the other hand, that bishops not only could, but should, fight in defense of their sees. He went on to add that a bishop who failed to resist the enemies of the Church ought to be punished; apparently he reconsidered and thought this last sentiment too daring; at least, this statement is deleted in the manuscript that reports it.⁸⁹

Following generations of popes, seeing that this aspect of the canon law was unclear, took pains to remedy the defect. A series of conciliar enactments and papal decretals flatly forbade clerics of whatever rank or grade, to engage in warfare directly and personally, even against the Saracens. Clerics could, however, give aid and counsel in just wars and might thus be indirect participants.⁹⁰

The notion of a law of war, of a set of rules that defines the limits within which war can be waged, has in our own times been labeled a myth,⁹¹ and certainly is somewhat paradoxical.⁹² In medieval Europe, however, the notion of a functional set of laws of war was taken with extreme seriousness and, within limits, actually did dictate the bounds within which organized fighting usually took place.

Toward the very beginning of his *Decretum*, Gratian defined the law of war in a canon drawn from Isidore of Seville (ca. 560–636). The terms of this definition were broad enough to embrace not only the formalities attending the declaration of war and such matters as military discipline within an army but also, what was more important, the division of the spoils of conquest.⁹³ In a later canon, drawing this time on Saint Augustine, Gratian outlined the general principles that should govern conduct in war. The basic thrust of this canon was to rule out unnecessary cruelty, conquest for its own sake, and savage treatment of defeated foes.⁹⁴

The canonists who commented on these passages were interested in part in the theoretical problems that they presented for the nature of law: What was the relationship of the law of war to other kinds of law? Their observations on this matter, though interesting in themselves, are not much to the point for our purposes. More relevant is the way in which they drew upon the Roman law to establish a distinction between public enemies (*hostes*) and mere brigands or robbers (*latrunculi vel praedones*).⁹⁵ The significance of this distinction lies in its consequences, since goods and persons captured from public enemies became the legitimate property of the conqueror, while those captured by brigands or robbers did not become the property of their captors. Similarly, the soldier fighting in a properly established army had a public function, which also created property claims, and this, too, helped to differentiate him from the ordinary predator.⁹⁶

The importance of all this was stated most clearly by a civilian lawyer, Cino da Pistoia (1270–1336/37). A time of war, Cino declared, is different from a time of peace; it follows that what is lawful in wartime differs from what is lawful in time of peace.⁹⁷ The implications of this insight both for the criminal and civil jurisdictions are fundamental.

In a just war, for one thing, killing in battle was no crime; war, in other words, legitimized homicide and no legal action lay against the slayer. This was laid down by Gratian.⁹⁸ The implications of the principle were stated succinctly by an anonymous Anglo-

Norman decretist: "Homicide is licit in three ways, namely when God secretly inspires one person to kill another; or when a judge having the power of the sword slays someone; or when, on command of a prince, a soldier slays an enemy."⁹⁹ Interesting as the first two conditions are, it is the third one in this series that is germane here—slaying a public enemy in time of war is licit homicide. The topic was treated by other legal writers as well, but the statement of the anonymous glossator represents the general opinion.¹⁰⁰

Solutions to questions of liability for damages in wartime were resolved differently, depending on whether the war was legally just or not. In a war against the infidel, which Hostiensis labeled a "Roman" war,¹⁰¹ enemies who lost property had no claim whatever to restitution, though such a claim might lie in other types of war.¹⁰² In contrast, the person initiating an unjust war was liable for all damages arising therefrom, according to Joannes Andreae (ca. 1270–1348). Joannes further maintained that there was a legal presumption that every war was unjust. The burden of proving that a given conflict was just, in other words, lay with the person advancing that claim.¹⁰³ Those who fought in an unreasonable war, Joannes thought, were not to be distinguished from robbers and brigands and they bore absolute liability for any damages they caused.¹⁰⁴

Innocent IV even earlier had established that participants in an unjust war had no right to claim against the person declaring the war for losses suffered as a result of service rendered in the war. Those who were summoned to fight in a just war had a limited claim; if they owed military service to the person declaring the war, participants had no claim against him, unless the war was manifestly evil.¹⁰⁵ This position was adopted by later commentators as well.¹⁰⁶

It is the function of human law, according to one of the decretist writers, to restrain violence.¹⁰⁷ It is well known that the medieval canon law did, in fact, attempt to fulfill this function, both by limiting warfare to certain periods of the year and by exempting certain classes of persons (priests, clerics, monks, lay brothers,

pilgrims, merchants, peasants, and travelers) from attack during time of war.¹⁰⁸ Beginning in the late ninth century, the medieval peace movement sought to use the penal sanctions of the canon law to punish those who violated these norms. By the late twelfth century, these provisions had been incorporated into the general law of the Western Church, particularly as a result of the constitutions adopted by the third Lateran Council in 1179.¹⁰⁹ Other councils sought to impose further limits on violence—by forbidding Christians to procure assassinations, for example.¹¹⁰ Although these restrictions were in theory supposed to apply to all just wars, the canonists realistically admitted that they failed to work well and that they were not in practice observed.¹¹¹

There was also an attempt to limit war by outlawing weapons that were thought to be too murderous and too effective in their results—the crossbow and the ballista, in particular. In this connection an interesting distinction was drawn between wars against Christians and wars directed against non-Christian enemies. The crossbow and the ballista were outlawed in the former class of wars; in wars against non-Christians, however, the use of these weapons was allowed.¹¹² The justification for this invidious distinction was not spelled out either in the canon itself or by the commentators on it; perhaps because it was thought to be self-evident. At any rate, these weapons, which contemporary opinion regarded as excessively dangerous and cruel, were in principle restricted to use in the holy war. A few canonists sought to broaden the interpretation of the canon to mean that these weapons might be used in just wars, but not in unjust ones.¹¹³ In practice the effort to restrict crossbows and ballistas to wars against non-Christians had little effect, and these weapons by the beginning of the thirteenth century were coming into common use in European wars.¹¹⁴

More effective in practice than attempts to limit the seasons of war, the classes of persons against whom action was directed, or the weaponry used in warfare were the efforts to restrict indiscriminate looting in time of war. Possibly this sort of control was more effective precisely because its implementation depended, in the final analysis, upon the courts, rather than upon soldiers in the

field. It made little sense to loot, after all, if subsequently one's possession of the looted goods could successfully be challenged in the courts.

Gratian had thought (relying on Saint Augustine) that soldiers should not loot at all, but should be paid for their service with established stipends,¹¹⁵ a notion that conformed to the law and practice of ancient Rome.¹¹⁶ Although the decretists tended to follow him on this point,¹¹⁷ the question was wholly academic. Medieval soldiers looted and tried to keep what they took, insofar as their leaders did not claim it for themselves. By the thirteenth century canonists had adjusted their treatment of the law to take account of this fact of life. The ordinary gloss to the *Liber Extra* invoked the just war distinction once more in this matter: if the war were unjust, no spoils legitimately could be taken; if the war were just, however, then spoils were legitimate.¹¹⁸ This rule applied not only to the property of the vanquished but also to the defeated soldiers themselves. They, too, became the property of the conquerors, to be divided among the members of the victorious army and, in the usual course of things, to be held for ransom.¹¹⁹

What I have said thus far will hopefully have given you some notion of the place of war in the medieval lawyers' scheme of things. Now we come at last—at long last, you may think—to the holy war.

Before we try to fit the holy war into the larger legal framework, it would be best to define the term, holy war, at least roughly. For our purposes here, I understand holy war to mean a war that is not only just, but justifying; that is, a war that confers positive spiritual merit on those who fight in it. This requires some positive action, in turn, from a religious authority, accepted as having the requisite power to grant official sanction to a holy war, to confer its particular sacred character upon it. Commonly, though not invariably, such a war will be rather closely directed by religious authorities, fought with the purpose of achieving some religious goal. But the outstanding characteristic of the holy war, I repeat, is that it is viewed as securing personal religious merit for those who participate in it.¹²⁰ Thus defined, the holy war may be viewed—and I shall

shortly show that it was so viewed by medieval lawyers—as a subset of the just war. Every holy war, to put it another way, was a just war; but not every just war was a holy war.

Now there was a feeling abroad in Western Europe during the Middle Ages that warriors who died in defense of Christendom or in battles to advance the spread of the Christian faith were *ipso facto* meritorious.¹²¹ It was in fact reasonably common literary form to describe them as martyrs for the Christian faith.¹²² The tradition embodied in this thinking was ancient, and it was rooted not only in popular piety but also in ancient legal sources. “Because they died for the *re publica*, they are, indeed, understood to live in perpetual glory,” the *Institutes* of Justinian declared, referring to soldiers who died for the Roman *patria*.¹²³ Tribonian, Justinian’s principal legal counsellor, was not fabricating this sentiment *ex nihilo*—it is founded upon statements of the classical Roman lawyers (Papinian, Ulpian, and Marcellus, for example),¹²⁴ as well as upon common opinions expressed by Roman literary types.¹²⁵

Other scholars have suggested that the emergence of the idea of holy war in Western Europe was favored by the disappearance of the Roman Empire in the West and that medieval wars against the pagans may be seen as a continuation of Roman wars against the barbarians.¹²⁶ It has been persuasively argued, too, that during the early Middle Ages there took place a transformation of the classical tradition of glorified death for the secular *patria* into a Christian tradition of sanctified death for the Christian *patria*—heaven; or alternatively for the advancement of the Christian faith here on earth.¹²⁷

Gratian incorporated in the *Decretum* a number of statements from authorities who reflected this view, most especially a letter of Pope Leo IV in which the pontiff stated that those who died for the truth of the faith, the salvation of the *patria*, and the defense of their fellow-Christians merited a heavenly reward.¹²⁸ This statement might be construed, though the evidence is rather slim, as a legal foundation for a doctrine of holy war. In any event, it was not until about a century after Gratian’s time that a well-developed scheme was framed to fit the holy war into the larger context of legal thought

about war in general. For this development, Hostiensis is our most important witness.

Hostiensis divided wars into seven different categories, of which the first is one that he labeled rather curiously "Roman war." This is the war between the faithful and the infidel; it is also our holy war. The other varieties of war in this scheme were, briefly, the judicial war, the presumptuous war, the licit war, the casual war, the voluntary war, and the necessary war.¹²⁹ Hostiensis's notion of the "Roman war" was evidently an adaptation of categories used by the medieval Roman lawyers,¹³⁰ but used by him to mean the holy war, that is, the Crusade. The holy war, thus, was what other writers called a "hostile war," that is, one in which the enemy were *hostes* in the full legal sense, the result of which was that their persons and property passed fully and rightfully to the ownership of those who defeated them.¹³¹

There was a further turn to this development, which I mention only in passing, since it has been more fully explored by others.¹³² The identification of the holy war with the Crusades seems to have gone one step further in the thirteenth century, so that writers, especially lawyers but also theologians, come to apply to wars declared by secular rulers the full panoply of legal rights earlier assigned to the Crusades. By the end of the thirteenth century some writers attribute to those who fall in battle on behalf of a national interest that eternal glory once reserved for Crusaders and earlier still for the defenders of the ancient Roman empire.¹³³

If the principal characteristic of the holy war is the spiritual merit that it is thought to confer upon those who participate in it, then we must take some account of what precisely that spiritual merit consisted. In the medieval Christian tradition the conventional response to a question on this point was: the indulgence. But what is an indulgence?

The answer to that question is unfortunately complex.¹³⁴ We have already noted that from as early as the mid-ninth century there are papal letters that link death on the battlefield with salvation of the deceased warrior's soul.¹³⁵ The early papal letters on the subject, however, were not indulgences in any recognizable sense

of the term. They were rather expressions of pious hope coupled with intercessory prayers for the salvation of the souls of the dead. Shortly after the middle of the eleventh century, Pope Alexander II (1061–73) moved closer to granting an indulgence when he proclaimed a commutation of penance for soldiers fighting in the wars of reconquest in Spain. Participation in war against the Moors was expressly stipulated by the pope as adequate satisfaction for the penance imposed upon these soldiers by their confessors.¹³⁶ Now there is a difference between a commutation of penance and an indulgence (at least as the term indulgence is conventionally understood). An indulgence is satisfaction for the temporal punishment required by God in satisfaction for sin. A commutation of penance, on the other hand, is satisfaction for the penance imposed by a confessor for the sins confessed to him. Punishment and penance are not necessarily the same at all; punishment is determined by God and the full extent of it is presumably known only to Him; penance is determined by the confessor and his estimate of the seriousness of a particular sin (and consequently the punishment required for that sin) is not necessarily identical with the judgment made on the matter by God.

When the Council of Clermont in 1095 adopted its provisions for the spiritual reward of the participants in the First Crusade, it specified that this reward should take the form of a commutation of penance.¹³⁷ There is some question, however, as to exactly what was meant, or thought to be meant, by that canon. Pope Urban II, who presided at the Council, seems to have felt unsure about the matter. In one of his letters, about a month after the Council, he blandly referred to the Council as having granted Crusaders “remission of all their sins”;¹³⁸ a few months later, in another letter, Pope Urban was more circumspect and described the spiritual reward granted the Crusaders as a commutation of penance.¹³⁹

Whatever doubts or uncertainties Pope Urban may have had about the Crusade “indulgence,” his twelfth-century successors, when bestowing similar spiritual favors, took care to state that they were granting them in the same sense that Pope Urban had.¹⁴⁰ Thirteenth-century popes and councils grew bolder about the mat-

ter and gradually the Crusade indulgence came to have the character of an indulgence proper, that is a remission of the temporal punishment for sin.¹⁴¹

Pope Innocent IV certainly had no doubt that the pope had the right to grant indulgences to those who went on Crusade,¹⁴² a power that he thought was linked to the fact that the Saracens possessed the Holy Land illegally. The holy war and the grant of indulgence for its participants rested, so far as Innocent IV was concerned, upon a property claim, fortified by the holiness of the particular territory involved.¹⁴³

Hostiensis's treatment of the indulgence for the holy war likewise rested the justification for the Crusade upon the pope's claims to a peculiar jurisdiction over the Holy Land, in virtue of its sanctity as the birthplace and home of Christ.¹⁴⁴ The indulgence, he also argued, was founded upon the papal plenitude of power. Proclamation of the Crusade and the Crusade indulgence was, therefore, limited strictly to the pope.¹⁴⁵ Hostiensis also defined what he meant by an "indulgence"—the first canonist, so far as I know, to do so—but his definition was lamentably vague and sweeping: an indulgence, he said, was a remission of all sins, plain, simple, and without qualifications.¹⁴⁶

The arguments raised in defense of indulgences for those who participated in the Crusades, the holy wars par excellence of the Middle Ages, point in turn to an even more basic question: How is it that Christians have the right to make war upon the Saracens and, indeed, on other unbelievers? What is the basis of that right and whence does its justification spring?

Not everyone, to be sure, agreed that the Crusades were justified. Ralph Niger, for one, writing about 1189 was dubious of the proposition that Christians had a right to conquer the Holy Land and maintained that the shedding of human blood was in no way a fitting atonement for sins.¹⁴⁷ Criticism of the Crusades in the thirteenth century was even more widespread than in Ralph Niger's day and created some problems for the papacy in pursuit of its crusading goals.¹⁴⁸

Still, such views were distinctly minority opinions and were not at all commonly held, at least not by widely influential writers. From at least the mid-twelfth century, when the question seems first to have been discussed, the general opinion was that the Crusades were undoubtedly holy wars and as such were fully justified.¹⁴⁹ This viewpoint found support among the lawyers. Although the canonists occasionally conceded that in principle Saracens and Jews were their neighbors and that they ought to love their neighbors as themselves, still this tended to be a qualified concession: "In truth, however, we ought to apply all the works of love according to each man's condition," as the ordinary gloss put it.¹⁵⁰

On one basic matter there was a sharp difference of opinion among the thirteenth-century canonists. This was the question of the legitimacy of the rights of Saracens and other non-Christians to hold lands and to rule them. One view was expressed by Innocent IV, who held that infidels did indeed have a legitimate right to hold possessions and that they were entitled to rule their lands and exercise jurisdiction over them. God, after all, made the sun to shine on the good and the evil alike, said Innocent, and it was not proper for the pope or the Christian faithful to take away the rights and possessions of infidels who possessed these things without sin.¹⁵¹ This position, Innocent also thought, was perfectly compatible with his views of papal power. The pope, he held, had jurisdiction and power, at least *de jure* if not *de facto*, over all men, infidels included. If therefore infidels were guilty of offenses against the natural law, the pope had a right to punish them.¹⁵² Innocent likewise claimed a right to punish Jews who embraced heresies against their own faith.¹⁵³

Although infidels, according to Innocent IV, should not be forced to embrace Christianity, they did have an obligation to allow Christian missionaries to preach the Gospel.¹⁵⁴ Should they fail to do this, or should they fail to obey other legitimate commands of the pope, then the pope had the right to punish them and to declare war against them.¹⁵⁵ Thus Innocent IV assimilated the holy war,

that is, a war declared by the pope against disobedient non-Christians, to the category of judicial wars, fought to execute the judgments of a judge against those who disobeyed a lawful command.

A sharply differing view of these questions was expressed by Hostiensis. He held that all jurisdiction and right to rule were taken away from non-Christians by the coming of Christ, who conveyed to His own followers exclusive rights to the exercise of power and jurisdiction on this earth.¹⁵⁶ Infidels were, therefore, subject to the Church; those infidels who accepted the Church's power over them were to be tolerated. Those who demurred, however, and refused to accept the Church's governance forfeited thereby the privilege of toleration.¹⁵⁷ Disobedient infidels were subject to papal punishment, and the pope was entitled to declare war against them, a war that was by definition both just and justifying.¹⁵⁸

Although Innocent IV and Hostiensis disagreed sharply on the basis for the holy war, they both agreed that the holy war represented a legitimate exercise of papal power and both of them found adequate juristic grounds for it. The grounds of their disagreement had to do with the legitimacy of possession, jurisdiction, and rule by non-Christians. These differences were of great significance for later lawyers, who had to wrestle with the problem of the legitimacy of the governments and property rights of non-Christian Indians in the New World.¹⁵⁹

We have seen how the canonists legitimized the holy war against Saracens, pagans, and other infidels. The legal commentators similarly taught that under some circumstances holy wars might be proclaimed against Christians whose interpretation of their faith was unorthodox and heretical. There were passages in the *Decretum* of Gratian to support this contention. Causa 23 itself was based on a situation in which heretics were coercing the faithful to embrace erroneous views, and a number of the authorities whom Gratian cited lent support to the view that under such circumstances it was legitimate for the Church to use force to oppose heretics.¹⁶⁰ Some, indeed, held that rebellious churchmen lost the right to use either the material or the spiritual sword, and hence forfeited all ecclesiastical rights and possessions.¹⁶¹

Gratian himself sanctioned the use of force against wicked persons and characterized such use as a legitimate employment of authority.¹⁶² Some of his followers went still further. Heretics, according to Rolandus, lost all their rights to property¹⁶³ and Huguccio emphasized that princes had an obligation to defend the Church against heretics and schismatics by making war against them.¹⁶⁴

A concerted holy war by the Church against heretics was first proclaimed by the third Lateran Council in 1179. Significantly, the pope who presided at this council was Alexander III, that same Rolandus who, as a law professor at Bologna, had taught that heretics forfeited their property rights. The decree of the third Lateran Council assimilated those who took up the sword against heretics with Crusaders who fought against the infidel in the Holy Land and granted fighters against heresy the same indulgence and other privileges enjoyed by Crusaders in the Latin East.¹⁶⁵ This proclamation was ineffective, at least in the sense that it produced no immediate practical action. In 1208, however, Pope Innocent III succeeded in translating the conciliar decree into practice when he launched what was to be called the Albigensian Crusade.¹⁶⁶

The canonists were not bashful about providing juristic justification for this papal action. Joannes Teutonicus in the *glossa ordinaria* to the *Decretum* taught that if there were heretics in a city, the whole city might lawfully be burnt.¹⁶⁷ Doubtless he had in mind the massacre at Béziers (22 July 1209).¹⁶⁸ Raymond of Peñafort (1175–1275) went further still. Not only was it lawful and laudable for princes to undertake holy wars for the repression of heretics, it was a duty required of them and those who failed to take part in such a war sinned by withholding their help.¹⁶⁹ Hostiensis thought it clear that the Crusades could be preached against heretics and Saracens. Although it was not quite so clear that the Church was authorized to proclaim a holy war against rebels and schismatics, Hostiensis finally concluded that it was reasonable and proper thus to extend the holy war concept.¹⁷⁰

To summarize briefly, the medieval canonists, beginning with Gratian, worked out a structured discussion of war as a Western Christian legal institution. Generally, the canonists sought to limit

warfare, to protect property rights, to define the circumstances within which wars could be fought. In the process the canonists combined elements drawn from Christian theology and from the ancient Roman law and welded them together into a doctrine of war. This doctrine, in turn, enabled them to analyze warfare, to establish criteria to classify various kinds of wars. To each variety of war they assigned conditions and limitations, which determined the legal consequences that flowed from that particular kind of conflict. Foremost in the minds of the commentators was the interest of the Christian religion and the interest of the institutional Church. Differing views of what best served these interests are reflected in the clashing views of different canonistic writers.¹⁷¹

Within the overall framework of the legal institution of war, the canonists recognized the holy war as a specific variety of just war; one that, like the others, had its own proper legal characteristics and limitations. The holy war was the most favored variety of war known to the canon law, for it allowed the widest latitude of action to its participants, and the fruits of victory in the holy war were more generously allocated to the victors than in any other type of war that the canonists acknowledged.

During the period dealt with here, there was a slow broadening of the circumstances under which a war might be classified as a holy war. Originally the holy war, otherwise known as the Crusade, was authorized only against Muslims and only in the Holy Land. Then it was enlarged to include wars against the Muslims in Spain. Enlarged again, it embraced wars against pagans. Subsequently the holy war was further extended to include wars against Christian heretics, schismatics, and other rebels against ecclesiastical authority.

By the end of the Middle Ages the holy war had become a model for expansionist campaigns by European Christians against non-Europeans and non-Christians in all parts of the world. It was in this way that the holy war institution was employed, for example, by the Spanish conquistadores in Latin America. The Protestant Englishmen and others who played the major role in the expansion of European-based colonies and settlements in North America

were not overly concerned with the formal trappings of holy war. Still it is not particularly difficult to see some dim vestiges of holy war ideology and the presuppositions that accompanied it in the westward expansion of the United States.

In the twentieth century people still speak of "Crusades" against one thing or another, but in modern times the term has been stripped of its former juridical content and effect. Some muted overtones of the holy war's older characteristics linger on. They are its legacy to modern thought and modern attitudes toward war.

So long as Europeans derived their cultural identity largely from their self-identification as Christians, the Church was able to exercise considerable control over warfare. This control reached its peak in the holy war. But with the rise of strong monarchies and nation-states, ecclesiastical control waned. Kings and their ministers, however, found it useful to adapt ecclesiastical concepts and the categories of the canon law to serve their own purposes. As cultural identifications have changed, however, the remnants of the older categories of warfare have become increasingly dangerous and misleading. The holy war served particular purposes in a specific social and cultural environment. In modern society its vestiges probably do more harm than good.

1. Thus, for example, Deut. 28:46-53; Lev. 24:26; Judges 2:14, 3:8, 4:1-2, 6:1-2, 10:6-9, 13:1; Isa. 5:24-30; Jer. 5:14-19. Scriptural passages throughout are cited from the Vulgate text, ed. Aloisius Gramatica (Città del Vaticano: Typis Polyglottis Vaticanis, 1959).

2. E.g., 1 Par. 29:11; 1 Mach. 2:19-22; 2 Mach. 10:38.

3. 2 Par. 13:12; Jer. 7:3.

4. 1 Cor. 15:57.

5. 2 Cor. 13:11; Rom. 15:33.

6. Matt. 26:52.

7. Exod. 21:24; Lev. 24:20; Deut. 19:21.

8. Matt. 5:38-48; Rom. 12:19.

9. Rom. 12:17, 21.

10. Carl Erdmann, *Die Entstehung des Kreuzzugsgedankens*, Forschungen zur Kirchen- und Geistesgeschichte 6 (1935; rpt. Stuttgart: W. Kohlhammer, 1955), p. 3. Erdmann's book is a basic point of departure for all subsequent studies of holy war in medieval Christian thought prior to the Crusades.

11. Tertullian, *Apologeticum* 37.4–5, ed. and trans. Jean-Pierre Waltzing, 2d ed., Collection Guillaume Budé (Paris: Société d'édition 'Les Belles Lettres', 1961), p. 79. Other evidence is cited by P. L. T. G. Goyau, "L'Eglise catholique et le droit de gens," *Recueil des cours de l'Académie de Droit International* 6 (1925): 129–32, and especially by Adolf von Harnack, *Militia Christi: Die christliche Religion und der Soldatenstand in den ersten drei Jahrhunderten* (Tübingen: J. C. B. Mohr, 1905). See also R. H. Bainton, "The Early Church and War," *Harvard Theological Review* 39 (1946): 189–212, and Remo Cacitti, "Il cristianesimo primitivo di fronte al problema della guerra e del servizio militare," *Vita e pensiero* 54 (1972): 77–90.
12. Augustine, *De civitate Dei* 1.21, ed B. Dombart and A. Kolb, Corpus Christianorum, series Latina 47 (Turnhout: Brépols, 1955), p. 23; Erdmann, *Die Entstehung*, p. 7, maintains that Augustine's *bellum Deo auctore* is synonymous with holy war.
13. *De civitate Dei* 19.7 (ed. Dombart and Kolb, 2:672).
14. *De civitate Dei* 19.12 (ed. Dombart and Kolb, 2:675).
15. Cicero, *De officiis* 1.11.36, ed Hubert Ashton Holden (1899, rpt. Amsterdam: Adolf M. Hakkert, 1966), p. 15; *De re publica* 3.23.35, ed. and trans. Clinton Walker Keys (Cambridge, Mass.: Harvard University Press, 1928; rpt. 1959), p. 212.
16. P. Bierzanek, "Sur les origines de la guerre et de la paix," *Revue historique de droit français et étranger*, 4th ser. 38 (1960): 85; A. Nussbaum, "Just War—A Legal Category," *Michigan Law Review* 42 (1943): 454–55; Cf. Lactantius, *Institutes* 6.9 in his *Opera*, ed. O. F. Fritzsche, 2 vols. (Leipzig: B. Tauchnitz, 1842–44), 2:18.
17. Bierzanek, "Sur les origines," pp. 85–86.
18. See the well-documented account of Augustine's writings on these matters by Juan Fernando Ortega, "La paz y la guerra en el pensamiento agustiniano," *Revista española de derecho canónico* 20 (1965): 5–35, and also Frederick H. Russell, "The Medieval Theories of the Just War According to the Romanists and Canonists of the Twelfth and Thirteenth Centuries" (Ph.D. diss., Johns Hopkins, 1969), pp. 47–73. [See now the published version of Russell's dissertation, *The Just War in the Middle Ages*, Cambridge Studies in Medieval Life and Thought, 3d ser. vol. 8 (Cambridge: Cambridge University Press, 1975).]
19. Goyau, "L'Eglise catholique et le droit des gens," p. 136 and passim. On the Christian idea of war generally, see also Robert Regout, *La Doctrine de la guerre juste de Saint Augustin à nos jours d'après les théologiens et les canonistes catholiques* (Paris: A. Pedone, 1935); Kurt Georg Cram, *Iudicium belli: Zum Rechtscharakter des Krieges in deutschen Mittelalter*, Archiv für Kulturgeschichte, Beiheft 5 (Münster: H. Böhlau, 1955); Ernst Nys, *Le Droit de guerre et les précurseurs de Grotius* (Brussels: Muquardt, Merzbach, et Falk, 1882); Alfred Vanderpol, *La Doctrine scolastique du droit de guerre* (Paris: A. Pedone, 1919); G. S. Windass and J. Newman, "The Early Christian Attitude to War," *Irish Theological Quarterly* 29 (1962): 235–47; and especially the works of Erdmann and Harnack previously cited.
20. I cannot agree with the position taken by some writers who hold that the idea of the holy war was universally known and accepted in the medieval period; see, e.g., Michel Villey, *La Croisade: Essai sur la formation d'une théorie juridique*, L'Eglise et l'état au moyen age 6 (Paris: J. Vrin, 1942), pp. 32–33; H. Pissard, *La Guerre sainte en pays chrétien: essai sur l'origine et le développement des théories canoniques* (Paris: A. Picard, 1912), p. 4.
21. The resemblances are summarized briefly by Albrecht Noth, *Heiliger Krieg und heiliger Kampf in Islam und Christentum: Beiträge zur Vorgeschichte und Geschichte der Kreuzzüge*, Bonner historische Forschungen 28 (Bonn: Ludwig Röhrscheid, 1966), pp. 139–46.

22. Noth's is the most recent attempt, but, at pp. 147–48, he confesses that he cannot prove any direct influence of the *jihād* on the Christian holy war. See also M. Canard, "La Guerre sainte dans le monde islamique et dans le monde chrétien," *Revue Africaine* 79 (1936): 605–23, where the author maintains *inter alia* that the Western Christian holy war idea emerges as a defense mechanism against Islamic pressures. For an account of Muslim holy war ideas, see Emmanuel Sivan, *L'Islam et la croisade: Idéologie et propagande dans les réactions musulmanes aux croisades* (Paris: A. Maisonneuve, 1968), pp. 9–22. The paper by Adolf Waas, "Der heilige Krieg in Islam und Christentum," *Die Welt als Geschichte* 19 (1959): 211–25, does little to advance the understanding of the question.

23. Erdmann, *Die Entstehung*, pp. 21, 86–106; cf. the studies of Hans-Dietrich Kahl, "Compellere intrare: Die Wendenpolitik Brunos von Querfurt im Lichte hochmittelalterlichen Missions- und Völkerrechts," *Zeitschrift für Ostforschung* 4 (1955): 161–93, 260–401, and "Zum Geist der deutschen Slawenmission des Hochmittelalters," *Zeitschrift für Ostforschung* 2 (1953): 1–14. Both of these studies have been reprinted by Helmut Beumann, ed., in *Heidenmission und Kreuzzugsgedanke in der deutschen Ostpolitik des Mittelalters Wege der Forschung* 7 (Darmstadt: Wissenschaftliche Buchgesellschaft, 1963), pp. 156–76, 177–274.

24. F. Prinz, *Klerus und Krieg im früheren Mittelalter: Untersuchungen zur Rolle der Kirche beim Aufbau der Königsherrschaft*, Monographien zur Geschichte des Mittelalters 2 (Stuttgart: A. Hiersemann, 1971), pp. 195–96. Edgar N. Johnson, *The Secular Activities of the German Episcopate, 919–1024*, University of Nebraska Studies 30/31 (Lincoln: University of Nebraska, 1932), pp. 166–88, 206–18, gives numerous examples of bishops' military involvement; on this, see also Leopold Auer, "Der Kriegsdienst des Klerus unter den sächsischen Kaisern," *Mittelilungen des Instituts für österreichische Geschichtsforschung* 79 (1971): 316–407; 80 (1972): 48–70.

25. Erdmann, *Die Entstehung*, p. 17.

26. Erdmann, *ibid.*, pp. 24–26, was the first to point out and to detail the significance of the liturgical evidence for the development of holy war ideology.

27. Erdmann, *ibid.*, pp. 74–77, discusses these blessings; at pp. 326–35, he gives examples of the prayers and ceremonies employed.

28. *Ibid.*, pp. 30–50, 166.

29. *Ibid.*, p. 171.

30. Pissard, *La Guerre sainte*, p. 10.

31. Erdmann, *Die Entstehung*, p. 161.

32. *Ibid.*, pp. 134–65; more recently, see I. S. Robinson, "Gregory VII and the Soldiers of Christ," *History* 58 (1973): 190–92.

33. Alfons M. Stickler, "Il 'gladius' nel Registro di Gregorio VII," *Studi Gregoriani* 3 (1948): 89–103.

34. Erdmann, *Die Entstehung*, pp. 185–87.

35. *Das Register Gregors VII.* 2.54, ed. Erich Caspar, 2 vols., Monumenta Germaniae Historica: Epistolae selectae in usum scholarum 2 (Berlin: Weidmann, 1920–23), 1:199; cf. Erdmann, *Die Entstehung*, p. 197.

36. Leo IV, *Epistolae* 1, in *Patrologiae cursus completus . . . series Latina*, ed. J. -P. Migne, 221 vols. (Paris: J. -P. Migne, 1844–64; cited hereafter as *PL*), 115:655–57; P. Jaffé, S. Löwenfeld et al. ed., *Regesta pontificum Romanorum*, 2 vols. (Leipzig: Veit, 1885–88; cited hereafter as *JL*), no. 2,642.

37. *PL*, 126:816; *JL*, 3,195.

38. Erdmann, *Die Entstehung* p. 111; J. A. Brundage, *Medieval Canon Law and the Crusader* (Madison: University of Wisconsin Press, 1969), pp. 23–24.

39. *JL*, 4,530 and 4,533. For the literature on these letters, see Brundage, *Medieval Canon Law and the Crusader*, p. 24, n. 90.

40. The letters of Alexander II just cited do refer to expansion in Spain at the expense of the Moors. The situations dealt with by Gregory VII, however, are different in quality, if not entirely different in kind, from the one dealt with by Alexander II.

41. Brundage, *Medieval Canon Law and the Crusader*, pp. 30–32; E. O. Blake, "The Formation of the 'Crusade Idea,'" *Journal of Ecclesiastical History* 21 (1970): 12, 14–15, 18.

42. John Henry Newman, *The Rise and Progress of Universities* 3:77, in his *Works*, new impression, 41 vols. (London: Longmans, Green, 1898–1903), vol. 30.

43. This conjunction was pointed out, perhaps without ironic intent, by Ferminio Poggiaspalla, "La Chiesa e la partecipazione dei chierici alla guerra nella legislazione conciliare fino alla Decretali di Gregorio IX," *Ephemerides iuris canonici* 15 (1959): 148.

44. Stephan Kuttner, "The Father of the Science of Canon Law," *The Jurist* 1 (1941): 2–19; A. Van Hove, "Quae Gratianus contulerit methodo scientiae canonicae," *Apollinaris* 21 (1948): 12–24.

45. Paul Fournier and Gabriel Le Bras, *Histoire des collections canoniques en Occident depuis les fausses décrétales jusqu'au Décret de Gratien*, 2 vols., Société d'histoire du droit, Bibliothèque d'histoire du droit (1931–32; rpt. Aalen: Scientia Verlag, 1972), 2:28–29, 37; Alfons M. Stickler, "Il potere coattivo materiale della Chiesa nella riforma gregoriana, secondo Anselmo da Lucca," *Studi Gregoriani* 2 (1947): 235–85; Robinsin, "Gregory VII and the Soldiers of Christ," pp. 186–88.

46. Ivo, *Decretum* lib. 10 (*PL*, 161:689–746); *Panormia* lib. 8 (*PL*, 161:1303–18). On the dates of his canonistic collections, see Fournier-Le Bras, *Histoire des collections*, 2:55–57, 105–6; on Ivo's career generally, see Rolf Sprandel, *Ivo von Chartres und seine Stellung in der Kirchengeschichte* (Stuttgart: A. Hiersemann, 1962; *Pariser historische Studien* 1).

47. Stephan Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX.*, *Studi e Testi* 64 (1935; rpt., Città del Vaticano: Bibliotheca Apostolica Vaticana, 1961), p. 255.

48. G. Hubrecht, "La 'Juste guerre' dans le Décret de Gratien," *Studia Gratiana* 3 (1955): 175.

49. Alfons M. Stickler, "De ecclesiae potestate coactive materiali apud magistrum Gratianum," *Salesianum* 4 (1942): 97–119; briefly summarized in his "Magistri Gratiani sententia de potestate ecclesiae in statum," *Apollinaris* 21 (1948): 98–107, and also in "De potestate gladii materialis ecclesiae secundum 'Quaestiones Bambergenses' ineditas," *Salesianum* 6 (1944): 113; Stanley Chodorow, *Christian Political Theory and Church Politics in the Mid-Twelfth Century: The Ecclesiology of Gratian's Decretum*, Publications of the U.C.L.A. Center for Medieval and Renaissance Studies 5 (Berkeley: University of California Press, 1972), p. 86.

50. Chodorow, *Christian Political Theory*, p. 229; Stickler, "De ecclesiae potestate coactiva," p. 9.

51. C. 23 q. 8 d.p.c. 18 and d.p.c. 28. Citations to the *Decretum Gratiani* and the other parts of the *Corpus iuris canonici* are to the standard edition by Emil Friedberg, 2 vols. (1879; rpt., Graz: Akademische Druck- und Verlagsanstalt, 1959). The conventional canonistic citation system is employed throughout; for explanations, see Xavier Ochoa Sanz and Aloisius Diez, *Indices canonum titulorum et capitulum Corporis iuris canonici*, *Universa bibliotheca iuris*, Subsidia I (Roma: Commentarium pro religiosis, 1964), pp. iv–v. See also Chodorow, *Christian Political Theory*, p. 241; Stickler, "De ecclesiae potestate coactiva," pp. 112–13.

52. C. 23 pr.: "Quidam episcopi cum plebe sibi commissa in heresim lapsi sunt: circumadiacentes catholicos minis et cruciatibus ad heresim compellere ceperunt, quo comperto Apostolicis catholicis episcopis circumadiacentium regionum, qui ab imperatore ciuilem iurisdictionem acceperant, imperauit, ut catholicos ab hereticis defenderent, et quibus modis possent eos ad fidelitatem redire compellerent. Episcopi, hec mandata Apostolica accipientes, conuocatis militibus aperte et per insidias contra hereticos pugnare ceperunt. Tandem nonnullis eorum neci traditis, aliis rebus suis uel ecclesiasticis expoliatis, aliis carcere et ergastulo reclusis, ad unitatem catholicae fidei coacti redierunt."

53. C. 23 q. 1 pr.; q. 3 pr.; q. 4 d.a.c. 16; q. 5 pr. and c. 1-8.

54. C. 23 q. 1 c. 1.

55. C. 23 q. 1 d.p.c. 7.

56. C. 23 q. 1 c. 3, 5.

57. C. 23 q. 5 d.p.c. 7 § 2 and c. 8, 13.

58. C. 23 q. 4 d.p.c. 37 and d.p.c. 54.

59. C. 23 q. 3 c. 6-8, 11.

60. C. 23 q. 3 d.p.c. 10.

61. There is an interesting shift here. At C. 23 q. 2 c. 1, Gratian cites Isidore of Seville's definition of the just war: "Iustum est bellum, quod ex edicto geritur de rebus repetendis, aut propulsandorum hominum causa" (Isidore, *Etymologiae* 18.2). One reading of this definition is that two conditions are necessary to make a war just: public authorization (*quod ex edicto geritur*) and legitimate purpose (*de rebus repetendis, aut propulsandorum hominum causa*). Gratian's interpretation is different. At C. 23 q. 2 d.p.c. 2, he restates the definition in a form which implies that either of these conditions is sufficient: "Cum ergo iustum bellum sit, quod ex edicto geritur, uel quo iniuriae ulciscuntur. . . ."

62. C. 23 q. 2 c. 3.

63. C. 23 q. 3 c. 3-4.

64. C. 23 q. 3 c. 5.

65. C. 23 q. 3 c. 6.

66. C. 23 q. 3 d.p.c. 1.

67. Thus Huguccio did not gloss C. 23 at all (although he dealt with war in some of his other glosses), while Stephen of Tournai's commentary on C. 23 is merely a conflation of statements drawn from Paucapalea and Rolandus: *Die Summa des Stephanus Tornacensis über das Decretum Gratiani*, ed. J. F. von Schulte (1891; rpt., Aalen: Scientia Verlag, 1965), p. 230. Rufinus, although he commented on C. 23, found Gratian's treatment prolix: "Huius causae tractatus est prolixius, sed que dicuntur aperta sunt nec per omnia scientiae decretorum accomoda; et ideo a prudenti lectori satis nobis indulgendum credimus, si moras solitas in presentis cause questionibus non ponamus"; *Summa decretorum* ed. Heinrich Singer (1902; rpt., Aalen: Scientia Verlag, 1963), pp. 403-4.

68. The differences between the ways in which the canonists and the theologians dealt with the subject of war are described by Regout, *La Doctrine de la guerre juste*, pp. 57-58.

69. Many of these legal commentaries, including some of the most important ones, have never appeared in print. The remarks that follow will, for the most part, be confined to the doctrines of writers whose works have been published.

70. C. 23 q. 8 c. 33, and C. 23 q. 4 c. 36.

71. *Die Summa des Paucapalea über das Decretum Gratiani* to C. 23 q. 8 pr., ed. J. F. von Schulte (Giessen: Emil Roth, 1890), p. 103.

72. *Die Summa magistri Rolandi, nachmals Papstes Alexander III.* to C. 23 q. 3, ed. F. Thauer (Innsbruck: Wagner, 1874), p. 89; see also the remarks of Marcel Pacaut,

Alexander III: Étude sur la conception du pouvoir pontifical dans sa pensée et dans son oeuvre, L'Eglise et l'état au moyen age 11 (Paris: J. Vrin, 1956), pp. 324–25.

73. Huguccio, *Summa* to C. 15 q. 6 c. 2 ad v. *materiali* [gladio], quoted in A. M. Stickler, "Der Schwerterbegriff bei Huguccio," *Ephemerides iuris canonici* 3 (1947): 225, n. 2.

74. *Glos. ord.* to C. 23 q. 1 c. 4 ad v. *principes*: "ut infra eadem q. 2 iustum [c. 1]. Nullus ergo bellare potest sine auctoritate principis, ut hic, et C. ut armo. usus. 1. 1 libro 11 [Cod. 11.47(46).1]; similiter princeps ecclesiasticus potest indicare bellum, ut infra eadem q. 8 igitur [c. 7] et c. omni et c. seq. [c. 9–10]." The *glos. ord.* to C. 15 q. 6 c. 2 ad v. *materiali* also presented an argument that ecclesiastical judges could declare war: "Argum. quod iudex ecclesiasticus bene potest indicare bellum et in bello insequi hostes, ut 23 quest. 8 igitur [c. 7] et c. hortatu [c. 10] et c. ut pridem [c. 17] et 63 dist. Hadrianus [c. 22?]. Item arg. quod iudex ecclesiasticus potest praecipere iudici saeculari ut puniat maleficos, ut 23 quaest. 4 si quos [c. 47] et q. 5 relegentes [c. 45] et q. 8 ut pridem [c. 17]. Argu. contra 23 ult. his a quibus [C. 23 q. 8 c. 30]." The *glossa ordinaria* to the *Corpus iuris canonici* is cited from the edition in 4 vols. (Venice: Apud Iuntas, 1605).

75. Innocent IV, *Apparatus in quinque libros Decretalium* to X 2.13.12 (Frankfurt a/M.: [Sigmund Feyerabend] 1570; rpt., Frankfurt a/M.: Minerva, 1968), fol. 231^{va}: "Vim quomodo hoc licuit, cum essent personae religiosae episcopus et canonici et templarii vix potuit hoc fieri sine poena canonica, 17 quaestio 4 si quis suadente [c. 29]. Item cum non sit eis licitum mouere bellum, 23 quaest. 3 c. 1 argument. ff. de capti. et postli. hostes [Dig. 49.15.24], et si aliis liceret, clericis tamen non liceret, 23 quaestio 8 clerici et c. his a quibus [c. 5, 30] et infra de homicid. suscepimus [X.5.12.10]."

76. Innocent IV, *Apparatus* to X 2.13.12 ad v. *respondemus* (Frankfurt, 1570, fol. 231^{va}): "[O]mnibus esse licitum mouere bellum pro defensione sua, et rerum suarum, nec dicitur proprie bellum, sed defensio, et quando quis est electus incontinenti, id est, antequam ad aliena negotia diuertat, licitum est sibi impugnare, ff. de verbor. obligat. 1. continuus respon. 1 [Dig. 45.1.37], ff. de duob. reis, duo § ultim. [Dig. 45.2.4], C. unde vi 1. 1 [Cod. 8.4.1] ff. de vi et vi ar. 1. 2 cum igitur [Dig. 43.1.6.2] et cum hoc a iure sit concessum, nec est autoritas principis necessaria, argum. 28 distinct. de his ad fin. [c. 5], ff. de condi. institu. 1. quae sub conditione § ultim. [Dig. 28.7.8.8], nec incidunt in excommunicationem, nisi in personas miserint manus, sed nec tunc, si sine violentia noluerunt exire domum, quod ex loco isto satis euidenter colligitur, et infra de homi. significasti [X 5.12.16] vel nisi modum excesserint, ut hic in fin. Item ubicunque per alium rem suam et ius suum prosequi non potest, licitum est autoritate superioris arma mouere et bellum indicare ad recuperandum sua, et etiam furtiue accipere, 23 quaestio 2 c. 2, C. de iudic. nullius [Cod. 3.1.11], tamen si principem super se habet, eius autoritate hoc faciat, et non aliter, 24 quaest. 2 c. 1 et hoc videtur iustum, quia nulli licet iura temperare sine autoritate conditoris iurium."

77. Innocent IV, *Apparatus* to X 5.37.5 (Frankfurt, 1570, fol. 542^{rb}): "Nos credimus, quod licet episcopus ratione iurisdictionis temporalis possit bellum indicare et antequam sit in percussione hortari ut utiliter pugnent et bellis interesse et possit semper hortari ad capiendum. Si quis autem, dum esset in percussione, incitauerit ad percutiendum alium, forte irregularis est, idem etiam si forte super bellatores vocem emitteret, dicens audacter pugnate, ar. contra, supra de ho. c. pe. [X 5.12.24] et de cle. percus. c. pe. et ult. [X 5.25.3,4]. Vel dic, quod in defensione possunt gubernare naues et alios ad pugnam defensionis incitare et intantum conflagrare hostes, quod eos dimittant, ar. de cle. percus. c. pe. et c. fi. [X 5.25.3,4], et nota supra ne cler. sententiam [X 3.50.9], alias autem in iniusto bello hoc non liceret, ut hic."

78. Thus Hostiensis, *Commentaria* [= *Lectura*] in *quinque libros Decretalium* to X 1.29.7; 1.34.1; 2.13.12; 5 vols. in 2 (Venice: Apud Iuntas, 1581; rpt., Torino: Bottega d'Erasmus, 1965), vol. 1, fol. 134^{ra}, 176^{va}; vol. 2, fol. 52^{vb}.

79. Hostiensis, *Lectura* to X 5.7.13 (Venice, 1581, vol. 5, fol. 39^{rb}): "[Accinxerint] Ar. quod autoritate ecclesiae bellum fieri potest, ad idem xxiii q. 8 si igitur et ca. hortatu [c. 10], xv q. vi auctoritatem [c. 2], lxiii di. Adrianus [c. 2], quod verum est, contra inimicos fidei, vel existunt, quod dic, ut notavi supra eodem."

80. Gulielmus Durantis, *Speculum iuris*, lib. 2, partic. 1 § 5, no. 2 (Frankfurt a/M.: Sumptibus heredum Andrae Wecheli et Johannis Gymnici, 1592), p. 136: "Ipse [*scil.*: ordinarius] enim per se nequit bellum indicere, quia hoc solius principis est, 23 q. 3 cap. 1 et 2. Alii tamen dicunt, et bene, quod ex quo causa spectat ad forum ecclesiasticum, iudex ecclesiasticus, sive sit ordinarius, sive delegatus, sententiam exequetur, et dabit possessionem corporalem, etiam in possessionibus et rebus laicorum ac rg. in prae. § praeterea; alioquin delusoria talis iurisdictio uideretur, ut extra de offi. deleg. ex litteris [X 1.29.29]."

81. Poggiaspalla, "La Chiesa e la partecipazione dei chierici," 141–47, reviews the evidence on this topic.

82. D. 36 c. 3.

83. C. 23 q. 3 c. 2, 10; q. 8 d.p.c. 6, d.p.c. 18; and cf. Chodorow, *Christian Political Theory*, p. 241, as well as Stickler, "De ecclesiae potestate coactiva," pp. 113–14.

84. C. 23 q. 8 c. 26, 27, d.p.c. 27, and d.p.c. 28.

85. Rolandus, *Summa* to C. 23 q. 1 and q. 8 (ed. Thaner, pp. 88, 96–98).

86. Rufinus, *Summa* to C. 23 q. 8 pr; also to C. 23 q. 1 pr. (ed. Singer, pp. 404, 412).

87. *The Summa Parisiensis on the Decretum Gratiani* to c. 23 q. 1 pr., ed. Terence P. McLaughlin (Toronto: Pontifical Institute of Mediaeval Studies, 1952), p. 210; *Summa 'Elegantius in iure diuino' seu Coloniensis* 2.126, ed. Gérard Fransen and Stephan Kuttner, *Monumenta iuris canonici, Corpus glossatorum* 1 (New York: Fordham University Press, 1969), p. 101; Sicard's opinion is cited by Robert L. Benson, *The Bishop-elect: A Study in Medieval Ecclesiastical Office* (Princeton: Princeton University Press, 1968), p. 321.

88. Huguccio, *Summa* to D. 50 c. 5 ad v. *necesse sit*, in Stickler, "Der Schwerterbegriff bei Huguccio," p. 266, n. 1. A similar view was expressed in the *Glossa Duacensis*; see A. M. Stickler, "Die 'Glossa Duacensis' zum Dekret Gratians," *Speculum iuris et Ecclesiarum: Festschrift für Willibald M. Plöchl* (Wien: Herder, 1967), pp. 391–92; see also Poggiaspalla, "La Chiesa e la partecipazione dei chierici," p. 151.

89. Cambridge, Fitzwilliam Museum, MS. McClean 135, fol. 195^{va}, gloss to C. 23 q. 8 c. 7 ad v. *decernimus*: "Episcopi ergo possunt interesse bellis, nam et Paulus interfuit, ut supra q. 3 Maximianus [C. 23 q. 3 c. 2] et Moyses, ut xxxvi di. c. ult. [c. 3; *MS. del.*:] immo punitur episcopus qui non agreditur hostes ecclesie, ar. extra i de hereticis et brabancionibus [Comp. I 5.6.7 = III Conc. Lat. (1179) c. 27]."

90. These enactments are detailed by Rosalio Castillo Lara, *Coacción eclesiástica y sacro romano imperio: estudio jurídico-histórico sobre la potestad coactivo material supremo de la iglesia en los documentos conciliares y pontificios del periodo de formación del derecho canónico clásico como un presupuesto de las relaciones entre Sacerdotium e Imperium*, *Studia et textus historiae iuris canonici* 1 (Torino: Libreria del Pontificio Instituto Salesiano, 1956).

91. M. D. R. Foot, "Introduction" to *The Fourth Dimension of Warfare*, ed. Michael Elliott-Bateman (New York: Praeger, 1970), p. ix.

92. Georg Schwarzenberger, "Functions and Foundations of the Laws of War," *Archiv für Rechts- und Sozialphilosophie* 44 (1958): 351.

93. D. 1 c. 10, citing Isidore, *Etymologiae* 5.7.

94. C. 23 q. 1 c. 4, citing St. Augustine, *Contra Faustum* 22.74–75.

95. Thus Stephen of Tournai, *Summa* to D. 1 c. 10 ad v. *in hostes* (ed. Schulte, p. 11); Rufinus, *Summa* to D. 1 c. 10 ad v. *egressio in hostes* (ed. Singer, p. 11); as well as

Hostiensis, *Summa aurea una cum summariis et adnotationibus Nicolai Superantii* [= Niccolò Soranzo], lib. 1, tit. De treuga et pace [X 1.34], no. 4 (Lyon: Joannes de Lambray, 1537; rpt., Aalen: Scientia Verlag, 1962), fol. 50^{ra}. These canonists incorporate part of *Dig.* 49.15.24. Citations from the Roman law throughout are to the standard edition by Theodore Mommsen et al., 3 vols. (1872; rpt., Berlin: Weidmann, 1963–65). The conventional citation system is explained in Xavier Ochoa Sanz and Aloisius Diez, *Indices titulorum et legum Corporis iuris civilis*, Universa bibliotheca iuris, Subsidia 2 (Roma: Commentarium pro religiosis, 1965), pp. x–xi.

96. *Dig.* 49.16.1; cf. M. H. Keen, *The Laws of War in the Late Middle Ages* (London: Routledge and Kegan Paul, 1965), p. 65.

97. Cino da Pistoia, *In Codicem et aliquot titulos primi Pandectorum tomi, id est, Digesti veteris, doctissima commentaria* to *Cod.* 6.50.1.1 (Frankfurt a/M.: Johannes Feyerabend, 1578; rpt., Torino: Bottega d'Erasmus, 1964), fol. 423^{ra}: "Not. primo quod aliud est ius tempore belli, et aliud tempore pacis. Sic et alius erat modus testandi tempore belli, ut insti. de testa. § 1 [*Inst.* 1.2.10.1]. ADDITIO. Et per hoc colligitur, quod aliud est iustum tempore guerrae et aliud est iustum tempore pacis, quia illud est iustum quod cuilibet in tempore suo expedit, sic et corpori humano aliud expedit tempore infirmitatis et aliud tempore sanitatis, et ita oportet legislatorem legem secundum tempora condere." See also Keen, *Laws of War*, p. 64.

98. C. 23 q. 5 d.p.c. 48.

99. Durham, Cathedral Library, MS. C.III.1, fol. 213^{ra}, gloss to C 23 q. 5 c. 9: "Tribus modis sit licite homicidium, scilicet cum inspiratur aliquis deo occulte ut aliquem interficiat, uel cum iudex habens potestatem gladii aliquem interficit, uel cum precepto principis miles interficit hostem."

100. See the treatment in the *Quaestiones Bambergenses*; Stickler, "De potestate gladii materialis," pp. 121–24; also Hostiensis, *Summa aurea* lib. 5, tit. De homicidio [X 5.12] no. 2 (Lyon, 1537, fol. 241^{va}), and Joannes Andreae, *Novella commentaria in libros Decretalium* to X 5.12.24, no. 2 (Venice: Apud Franciscum Franciscum, 1581; rpt., Torino: Bottega d'Erasmus, 1963), vol. 5, fol. 65^{ra}–^{rb}.

101. Hostiensis, *Summa aurea*, lib. 1, tit. De treuga et pace [X 1.34], no. 4 (Lyon, 1537, fol. 59^{rb}).

102. Hostiensis, *Lectura super sexto Decretalium*, tit. De homicidio voluntario, c. 1 [VI^o 5.4.1] (Venice, 1581, fol. 29^{va}): "Ergo in Summa in Romano bello iudiciali licito necessario non tenetur quis ad restitutionem, nec peccat is qui ex tali bello aliquid acquirit, dummodo modum non excedat, nam si potest hominem capere viuum non licet perimere, ff. ad 1. Aquil., sed. etsi quemcumque [*Dig.* 9.2.5] et secundum hoc intellige supra eodem c. ii et 3. In praesumptuoso vero temerario et voluntario tenetur ad restitutionem et de tali intellige quod loquamur supra de iureiuran., sicut."

103. Joannes Andreae, *Novella* to X 2.24.29, no. 3 (Venice, 1581, fol. 197^{va}): "Potest etiam determinare uerbum 'mouit'; et est sensus, si constiterit, quod mouit bellum, q.d. considerandum, cum quaeritur de restitutione damnorum datorum in bello, inquiri debere quis fuerit bellum mouens, quasi illi sit imputandum totum commissum in illo conflictu, C. de ui pu. uel priua., 1. quoniam multa facinora [*Cod.* 9.12.5], ff. si qua. pauperi, 1.1 § cum arietes [*Dig.* 9.1.1.11], ff. ad 1. Aquil. si ex plagis § 1 [*Dig.* 9.2.52.1], et sciendum hoc asserenti incumbit probatio, ff. ad 1. Aquil. scientiam § cum stramenta [*Dig.* 9.2.45.3]. Ex his collige, quod bellum mouens tenetur ad restitutionem, quod uerum, quando iniuste mouit, quod prima facie praesumitur; si tamen mouens vult probare, quod iuste mouit, in nullo tenetur; sed facit sua, quae occupauit, ut in glo. 2 de quo remittit Hosti. de homici. pro humani [VI^o 5.4.1], et ad id, quod infra dicam et dicit hoc iudicium ratione pacis et pacti spectare ad ecclesiam, de iudi. nouit [X 2.1.13] et de treu. et pace c. 1 et 2 [X 1.34.1–2],

unde etiam dicit lex, quod si praeses ledat subditum suum, recurritur ad episcopum, ut in aut. ut dif. iudi. § si tamen contingit, coll. 9 [*Auth.* 9.10.4 = *Nov.* 86]."

104. Joannes Andreae, *Novella* to X 2.24.9, no. 4 (Venice, 1581, fol. 197^{va}): "[Bellum] ut dicit Hosti. bellum sine causa rationabili et auctoritate iuris, uel iudicis moueri non debet, licet tota die fiat contrarium, tenentur ergo tales ad restitutionem, quia censentur hic inde praedones et latrunculi, ff. de captiuis et postli. reuer., 1. hostes [*Dig.* 49.15.24], ff. de verbo. signi., 1. hostes [*Dig.* 50.16.118], nisi ubi altera partium dat damnum se defendendo, quod omne ius permittit, ff. de iusti. et iur., ut vim [*Dig.* 1.1.3], dummodo defendens non excedat modum, quod tunc facit quando violentiam infert, qua ommissa, salua sibi erat defensio ad arbitrium boni iudicis, de quo remittit ad decre. olim i. de resti. spo. et sen. excom. dilecto [X 2.13.12; VI^o 5.11.6]."

105. Innocent IV, *Apparatus* to X 2.24.9 (Frankfurt, 1570, fol. 288^r): "Et nota, quod nunquam vocati ad iniustum bellum, habent actionem mandati, vel aliam contra vocantem ad impendia, vel damna contingentia sibi occasione vocationis, vel mandati, quia in re turpi obligatio non contrahitur, insti. mandati. § illud quoque [*Inst.* 1.3.26.7], ff. mand. si remunerandi § rei turpis. et l. si manda. § qui eodem [*Dig.* 17.1.63; 17.1.27.7]. Vocati autem ad iustum bellum, actionem mandati habent contra vocantem, nisi ex debito teneantur, vel nisi causa pietatis, vel humanitatis, vel parentelae faciant, 23 quaestio tertia non in inferenda et in aliis c. eiusdem quaestio [c. 7], 11 quaestio 3 si domino et c. Iulia [c. 23, 94]; et videtur, quod illi qui ex debito faciunt excusantur, nisi bellum esset malum manifeste, 11 quaestio tertia, quid ergo [c. 99], 23 quaestio 1 quid culpatur [c. 4]."

106. Thus Joannes Andreae, *Novella* to X 2.24.29, no. 5 (Venice, 1581, fol. 197^{va}); Giovanni da Legnano, *Tractatus de bello, de represaliis et de duello*, c. 42, ed. and trans. Thomas E. Holland, *Classics of International Law* (1917; partial rpt., New York: Oceania Publications, 1964, pp. 259–60.

107. *Summa 'Elegantius'* 1 § 4 (ed. Fransen-Kuttner, p. 2).

108. See Hartmut Hoffmann, *Gottesfriede und Treuga Dei*, *Monumenta Germaniae Historica*, *Schriften* 20 (Stuttgart: A. Hiersemann, 1964); for additional bibliography on the peace movement, see Brundage, *Medieval Canon Law and the Crusader*, pp. 12–14.

109. Third Lateran Council c. 21–22 in *Conciliorum oecumenicorum decreta*, 2d ed. by Giuseppe Alberigo et al. (Basel: Herder, 1962; hereafter cited as *COD*), p. 198 [= X 1.34.1–2].

110. First Council of Lyon (1245) c. 18 (*COD*, pp. 266–67) [= VI^o 5.4.1].

111. *Glos. ord.* to X 1.34.1 ad v. *frangere*: "Sed quod dicit his hodie non tenet; et episcopi qui non seruant hanc constitutionem, non dicuntur transgressores, quia non fuit moribus utentium approbata huiusmodi treuga, 4 dist. cap. in isti § leges [D. 4 d.p.c. 3]."

112. Second Lateran Council (1139) c. 29 (*COD*, p. 179) = X 5.15.1.

113. Thus Raymond of Peñafort, *Summa de poenitentia et matrimonio cum glossis Ioannis de Friburgo* 2.4.1 (Rome: Sumptibus Ioannis Tallini, 1603; rpt., Farnborough: Gregg Press, 1967), p. 165: "Possunt Christiani exercere hoc officium contra paganos, et nostrae fidei persecutores; contra Christianos autem, et Catholicos nequaquam, extra eodem: 'artem illam mortiferam et odibilem balistariorum et sagittariorum aduersus Christianos et Catholicos exerceri de caetero sub anathemate prohibemus' [X 5.15.1]. Item dicunt quidam, quod in bello iusto possunt officium hoc exercere contra Christianos, quia in tali bello dicit Augustinus, 'cum quis iustum bellum suscepit, utrum aperte pugnet, an ex insidiis nihil ad iustitiam interest' [C. 23 q. 2 c. 2]. Dominus etiam iussit ad Iesum naue, ut constitueret sibi retrorsum insidias, id est, insidiantes bellatores, 23 q. 2 Dominus [c. 2], idem dicit Gregorius 23 q. 8 ut pridem [c. 17]." But cf. Goffredus de Trano, *Summa super titulis Decretalium* to X 5.15.1 (Lyon: Roman Morin, 1519; rpt., Aalen: Scientia Verlag, 1968), fol. 214^{vb}: "Christiani aduersus christianos non possunt hoc officium exercere, ut

infra eodum c. uno. Quid verum est si bellum fuerit iniustum, nam si iustum quolibet genere armorum est utendum immo ut vincatur dolis est et insidiis insistendum, ut xxiii q. ii dominus [c. 2] et questio viii ut pridem [c. 17], iuxta illud, 'Nihil refert armis contingat palmo dolisue.' Et alibi, 'Dolus virtus quis in honeste requirat [cf. *Aeneid* 2.390: Dolus an virtus quis in hoste requirat?].' Sed contra paganos et persecutores fidei christiane potest hoc officium exerceri." See also the remarks on this topic in the *Summa* of Peter the Chanter, quoted in John W. Baldwin, *Masters, Princes and Merchants: The Social Views of Peter the Chanter and His Circle*, 2 vols. (Princeton: Princeton University Press, 1970), 2:160, n. 128.

114. Paul Fournier, "La Prohibition par le II^e Concile de Latran d'armes jugées trop meurtrières (1139)," *Revue générale du droit international publique* 23 (1916): 471–79.

115. C. 23 q. 1 c. 5.

116. *Dig.* 49.16.9.

117. Thus, Paucapalea, *Summa* to C. 23 q. 1 (ed. Schulte, p. 99); Rufinus, *Summa* to D. 1 c. 10 ad v. *item modus stipendiorum* (ed. Singer, p. 11).

118. *Glos. ord.* to X 2.24.29 ad v. *restituat*: "Quia iniusta erat bellum; sed si iustum fuisset bellum, statim res sic occupatae essent suae, 23 q. 5 dicat [c. 25]." And cf. the *glos. ord.* to C. 23 q. 7 pr. ad v. *nunc autem*.

119. Innocent IV, *Apparatus* to X 2.24.29 (Frankfurt, 1570, fol. 288^v); Joannes Andreae, *Novella* to X 2.13.12 and 2.24.29 (Venice, 1581, vol. 2, fol. 82^{ra-rb}, 198^{ra}). The practical consequences of these considerations are described by Keen, *Laws of War*, pp. 70–71, 82–100. On the application of these doctrines by the Spanish conquistadores in the New World, see Silvio Zavala, *New Viewpoints on the Spanish Colonization of the New World* (Philadelphia: University of Pennsylvania Press, 1943), p. 50.

120. For other, and somewhat broader, definitions of the holy war, see Erdmann, *Die Entstehung*, p. 1; Villey, *La Croisade*, pp. 21–22; also Russell, *Medieval Theories of the Just War*, pp. 3–4.

121. Though not, apparently, in the Eastern Empire; see Conrad, "La Guerre sainte," pp. 615–22; Sir Steven Runciman, *A History of the Crusades*, 3 vols. (Cambridge: At the University Press, 1951–54), 1:83–84.

122. Examples are numerous; for the period of the First Crusade, see Paul Rousset, *Les Origines et les caractères de la première croisade* (Neuchâtel: La Baconnière, 1945), pp. 81–83; for earlier examples, see Erdmann, *Die Entstehung*, pp. 22–24, 111–13, 128–29, and Noth, *Heiliger Krieg und heiliger Kampf*, pp. 96–109.

123. *Inst.* 1.25 pr.

124. *Dig.* 3.2.25; 9.2.7.4; 11.7.35.

125. For a brief sketch of the literary evidence, see Ernst H. Kantorowicz, "Pro patria mori in Medieval Political Thought," *American Historical Review* 56 (1951): 472–75.

126. Villey, *La Croisade*, p. 27; Canard, "La Guerre sainte," p. 620.

127. Kantorowicz, "Pro patria mori," pp. 475–77.

128. C. 23 q. 8 c. 9, 46. On the attribution of this latter canon, see Hubrecht, "La 'Guerre juste,'" p. 173, n. 40.

129. Hostiensis, *Summa aurea*, lib. 1, tit. De Treuga et pace [X 1.34] no. 4 (Lyon, 1537, fol. 59^{rb}): "Ut autem in summa predicta recolligamus aliud potest dici bellum romanum puta quod est inter fideles et infideles et hoc iustum: ut nota supra eodem § ver. unum. § Hoc autem voco romanum: quia roma est caput fidei et mater, xxv q. i is ita [d.p.c. 16 § 1], C. de summa tri., 1. fi. [*Cod.* 1.1.8], xxiii q. i. hec est fides et c. quoniam [c. 14, 25], infra de here., ad abolendam [X 5.7.9]. § Secundum quod est inter fideles impugnantes

autoritate iudicis: et hoc iudiciale potest dici: et est iustum secundum ea quae notavi supra eodem ver. si fiat, et ver. ergo qui autoritate iudicis. § Tertium quod faciunt fideles iudici contumaces, et potest vocari, presumptuosum, et est iniustum, ut notavi supra eodem ver. ergo qui autoritate. § Quartum quod faciunt fideles autoritate iuris, et hoc potest dici licitum et est iustum. § Quintum quod faciunt fideles contra autoritatem iuris, et hoc potest dici temerarium et est iniustum, ut de his duobus notavi supra eodem ver. idem est. § Sextum quod faciunt fideles propria autoritate alios impugnantes et hoc potest dici voluntarium et est iniustum. § Septimum quod fideles faciunt defendendo se autoritate iuris contra voluntatem impugnatores, et hoc potest dici necessarium et est iustum et de his proximis duobus notavi supra eodem ver. sed si non interueniat, ergo in. § Romano. § Iudiciali. § Licitum. § Necessario non tenetur quis ad restitutionem." See also Hostiensis, *Lectura super sexto Decretalium*, tit. De homicidio voluntario, c. 1 [= VI^o 5.4.1] (Venice, 1581, fol. 29^{rb}-^{va}). Regout, *La Doctrine de la guerre juste*, p. 55, thinks that Hostiensis's doctrine was based on an idealized image of the *imperium romanum*; cf. Russell, *Medieval Theories of the Just War*, p. 259. I am not convinced. Hostiensis was trying to create an analytical scheme for classifying wars. Those public wars in which the enemy were *hostes* in the rigor of the term were dealt with by his Roman law sources. Hence the term "Roman war" had a neat logic of its own within the legal context, without any need to refer to an idealized Roman Empire. When Hostiensis goes further to identify this "Roman war" with war against the infidel, the Rome he is referring to is papal, not imperial, Rome, as even a cursory glance at his legal citations quickly makes plain. Hostiensis's analysis is copied almost verbatim by Giovanni da Legnano, *Tractatus de bello* c. 76 (Holland ed., p. 276).

130. Thus see the *glos. ord.* to *Dig.* 1.1.5 ad v. *ex hoc*: "[B]ella, ergo insurgentium iniquum est, cum iniquum inducat, sed dic quod dicit de bello licito, ut indicto a populo Romano, vel Imperatore, nam hostes sunt quibus populus etc., ut infra, de captivis, 1. hostes [*Dig.* 49.15.24]. Item dicit de bello indicto ad iniuriam propulsandam, quod licet, ut supra eodem, 1. ut vim [*Dig.* 1.1.3], non autem de alio, ne inde iniuriae nascatur occasio, etc., ut C. unde vi, 1. meminerint [*Cod.* 8.4.6]." The *glossa ordinaria* to the Roman law is cited from the *Corpus iuris civilis una cum glossis* 5 vols. (Venice: Apud Iuntas, 1592).

131. Cino da Pistoia, *Commentaria* to *Cod.* 6.50.1, no. 7 (Frankfurt, 1578, fol. 423^{rb}).

132. Kantorowicz, "*Pro patria mori*," pp. 477-92 and *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press, 1957), pp. 244, 256-57; also Gaines Post, *Studies in Medieval Legal Thought: Public Law and the State, 1100-1322* (Princeton: Princeton University Press, 1964), pp. 438, 452-53.

133. *Glos. ord.* to *Dig.* 3.2.25 ad v. *si quis*; to *Dig.* 9.2.7.4 ad v. *gloriae causa*.

134. I have dealt with this question earlier, in *Medieval Canon Law and the Crusader*, pp. 145-53. My interpretation has not commanded universal agreement; see the reservations expressed by Hans Eberhard Mayer, *The Crusades*, trans. John Gillingham (London: Oxford University Press, 1972), p. 292 n. 13. Mayer's interpretation still does not resolve the problem pointed out in my study, namely, that the texts of the Crusade proclamations and conciliar degrees concerning the Crusade at least up to 1215 describe a commutation of penance and not an indulgence, as that term has been understood since the late thirteenth century. How the earlier "indulgences" were popularly understood and how they were represented by Crusade preachers is, of course, another question entirely.

135. The relevant letters are: Pope Leo IV, December 853, to the Frankish army (*PL*, 115:655-57 = *JL* 2,642 = C. 23 q. 8 c. 9 and C. 23 q. 5 c. 46); John VIII, September 878 (*PL*, 126: 816 = *JL* 3,195).

136. *Epistolae pontificum Romanorum ineditae*, ed. S. Löwenfeld (1885; rpt. Graz: Akademische Druck- und Verlagsanstalt, 1959), no. 82; *JL* 4,540.

137. Council of Clermont, c. 3, in Schafer Williams, "Concilium Claromontanum, 1095:

A New Text," *Studia Gratiana* 13 (1967): 39: "Quicumque pro sola deuotione, non pro honoris uel pecunie adeptione, ad liberandam ecclesiam dei Ierusalem profectus fuerit, iter illud pro omni penitentia reputetur." This version is the oldest text of the Clermont canons and can be dated to ca. 1100. See also Robert Somerville, ed., *The Councils of Urban II*, vol. 1, *Decreta Claromontensia*, *Annuario historiae conciliorum*, Supp. 1 (Amsterdam: Adolf M. Hakkert, 1972), p. 74.

138. Urban II, letter to the Flemings (late December 1095): "Cui calamitati pio contuitu condolentes Gallicanas partes uistauminus eiusque terrae principes et subditos ad liberationem Orientalium ecclesiarum ex magna parte sollicitauimus et huiusmodi procinctum pro remissione omnium peccatorum suorum in Aruernensi concilio celebriter eis iniunximus. . . ." Heinrich Hagenmeyer, ed., *Epistulae et chartae ad historiam primi belli sacri spectantes* (Innsbruck: Wagner, 1901), p. 136, no. 2.

139. Urban II, letter to the Bolognese, 19 September 1096: "Sciatis autem eis omnibus, qui illuc non terreni commodi cupiditate sed pro sola animae suae salute et ecclesiae liberatione profecti fuerint, paenitentiam totam peccatorum, de quibus ueram et perfectam confessionem fecerint, per omnipotentis Dei misericordiam et ecclesiae catholicae preces tam nostra quam omnium paene archiepiscoporum et episcoporum qui in Galliis sunt auctoritate dimittimus. . . ." Hagenmeyer, *Epistulae et chartae*, p. 137, no. 3.

140. First Lateran Council (1123) c. 10 (*COD*, pp. 167–68); Erich Caspar, "Die Kreuzzugsbullen Eugens III.," *Neues Archiv* 45 (1924): 303–5.

141. This development begins already with the crusading canon, *Ad liberandam*, of the fourth Lateran Council (1215) c. 71 (*COD*, pp. 246–47), which the first Council of Lyon (1245) c. 5 (*COD*, p. 277) repeats verbatim.

142. His very certainty may, of course, arise from a wish to banish doubts, both his own and those of others, and to stifle criticism of the indulgence. Cf. the remarks of David Daube, "The Self-understood in Legal History," *The Juridical Review*, n.s. 18 (1973): 134.

143. Innocent IV, *Apparatus* to X 3.34.8, no. 1, 7 (Frankfurt, 1570, fol. 429^v–430^v): "Pro defensione: hoc non est dubium, quod licet Papae fidelibus suadere, et indulgentias dare, ut terram sanctam et fideles habitantes in ea defendant, 23 q. 8 omni timore et c. igitur [c. 9, 7]; sed nunquid est licitum inuadere terram, quam infideles possident, vel quae est sua? Et nos ad hoc respondemus, quod in veritate domini est terra, et plenitudo eius orbis terrarum, et universi qui habitant in eo. Ipse enim est creator omnium, idem etiam ipse Deus haec universa subiecit dominio rationalis creaturae, propter quam haec omnia fecerat, ut habemus in 1 c. Genes. et haec a principio seculi fuit communis, quousque usibus priorum parentum introductum est, quod aliqui aliqua, et alii alia sibi appropriant, nec fuit hoc malum, imo bonum, quia naturale est, res communes negligi, et etiam communio discordiam parit, et fuerunt a principio cuiuscunque qui occupauit, quae in nullius bonis erant, nisi Dei. Et ideo licebat cuilibet occupare, quod occupatum non erat, sed ab aliis occupatum, occupare non licebat, quia fiebat contra legem naturae, qua cuilibet indutum est, ut alii non faciat, quid sibi non vult fieri. . . . Quod autem Papa facit indulgentias illis, qui vadunt ad recuperandam terram sanctam, licet eam possideant Sarraceni, et etiam indicere bellum et dare indulgentias illis, qui occupant terram sanctam, quam infideles illicite possident, hoc totum est ex causa, nam iuste motus est Papa, si intendit terram sanctam, quae consecrata est natiuitate, habitatione, et morte Iesu Christi, et in qua non colitur Christus, sed Machometus reuocare, ut incolatur a Christianis." Joannes Andreae, *Novellae* to X 3.34.8, no. 6, 11 (Venice, 1581, vol. 3, fol. 172^{ra}–173^{ra}), follows Innocent IV closely, at times verbatim, in his treatment of these themes. See also the discussion of this facet of Innocent IV's thought by James Muldoon, "Extra ecclesiam non est imperium: The Canonists and the Legitimacy of Secular Power," *Studia Gratiana* 9 (1966): 570–80, and by John A. Kemp, "A New Concept of the Christian Commonwealth in Innocent IV," *Proceedings of the Second International Congress of Medieval Canon Law*, ed. Stephan Kuttner and J.

J. Ryan, *Monumenta iuris canonici*, Subsidia 1 (Città del Vaticano: S. Congregatio de Seminariis et Studiorum Universitatibus, 1965), p. 158.

144. Hostiensis, *Lectura* to X 3.34.8, no. 17–18 (Venice, 1581, vol. 3, fol. 128^{va}): “Quod autem papa illis qui vadunt ad defendendum et recuperandam Terram Sanctam dat indulgentias et infidelibus Terram possidentibus bellum indicit, licite facit papa et iustam causam habet, cum illa consecrata sit natiuitate, conuersatione, et morte Iesu Christi, et in qua non colitur Christus, sed Machometus: unde et quamuis infideles ipsam possideant iuste tamen exinde expelluntur, ut incolatur a christianis et ad ipsorum dominium reuocetur. . . .”

145. Hostiensis, *Lectura* to X 5.6.17, no. 20 (Venice, 1581, vol. 5, fol. 34^{rb}): “Unde et ex causa plenam indulget veniam peccatorum, prout sequitur, quod nulli alii licitum est, immo limitatur potestas, infra de pen., cum ex eo [X 5.38.14]. Et est ratio, quia ipse Papa vocatus est in plenitudinem potestatis. Ideoque plenam indulgentiam potest facere. Alii vero in partem sollicitudinis, ideoque ad ipsos particularis tantum pertinet et semiplena, ad hoc ii q. vi decreto [c. 11] et supra de usu. pal. ad honorem [X 1.8.4].” See also *Lectura* to X 5.7.13, no. 16 (Venice, 1581, vol. 5, fol. 39^{rb}).

146. Hostiensis, *Lectura* to X 5.7.13, no. 17 (Venice, 1581, vol. 5, fol. 39^{rb}): “[Indulgentia] quae est remissio omnium peccatorum, ut patet supra de iudaeis, ad liberandam [X 5.6.17] in textu decisionis. . . .”

147. Ralph Niger, *De re militari et triplici via peregrinationis* c. 12, ed. George B. Flahiff, “*Deus non vult: A Critic of the Third Crusade*,” *Mediaeval Studies* 9 (1947): 182. Niger was not, however, critical of the just war concept and conceded that under some circumstances a war might be spiritually beneficial.

148. This whole matter has been well treated by Palmer A. Throop, *Criticism of the Crusade: A Study of Public Opinion and Crusade Propaganda* (Amsterdam: N. V. Swets & Zeitlinger, 1940).

149. Jean Leclercq, “Gratien, Pierre de Troyes et la seconde croisade,” *Studia Gratiana* 2 (1954): 585–93.

150. *Glos. ord.* to D. 2 de pen. c. 5 ad v. *participes*: “Ergo Iudei et Sarraceni proximi nostri sunt et diligendi a nobis ut nos et verum est: verum tamen omnia opera dilectionis impendere debemus secundum uniuscuiusque conditionem. 86 dis. pasce [c. 21].” See also C. 23 q. 4 d.p.c. 16; C. 23 q. 8 c. 11. The *Glossa Palatina* to C. 24 q. 3 c. 1 presents an intriguing discussion of the question whether it is a greater wrong to kill a pagan or a good Christian: Cambridge, Trinity College, MS. 0.10.2, fol. 32^{rb}.

151. Innocent IV, *Apparatus* to X 3.34.8, no. 3 (Frankfurt, 1570, fol. 430^r): “Item per electionem poterunt habere principes, sicut habuerunt Saul. et multos alios, 8 q. 1 licet [c. 15]; sic ergo audacter, et in pluribus aliis c. predicta in quam scilicet dominia, possessiones, et iurisdictiones licite sine peccato possunt esse apud infideles. haec enim non tantum pro fideli, sed pro omni rationabili creatura facta sunt. ut est predictum. Ipse enim solem suum oriri facit super bonos et malos, ipse et volatilia pascit. Matt. c. 5 circa finem et 6; et propter hoc dicimus, non licet Papae vel fidelibus auferre sua. siue dominia, siue iurisdictiones infidelibus, quia sine peccato ea possident, sed bene tamen credimus. quod papa qui est vicarius Iesu Christi, potestatem habet non tantum super Christianos, sed etiam super omnes infideles, cum enim Christus habuerit super omnes potestatem, unde in psal. Deus iudicium regi da [Ps. 71], non videtur diligens paterfamilias nisi vicario suo, quem in terra dimittebat, plenam potestatem super omnes dimisisset.”

152. Innocent IV, *Apparatus* to X 3.34.8, no. 4 (Frankfurt, 1570, fol. 430^r): “Item ipse [Deus] Petro et successoribus eius dedit claues regni coelorum, et ei dixit: ‘quodcunque ligaveris’ etc. [Matt. 16:19]. Item alibi: ‘Pasce oues meas’ etc. [John 21:17] supra de elec. significasti [X 1.6.4]. Omnes autem tam fideles quam infideles oues sunt Christi per

creationem, licet non sint et ouili ecclesiae, et sic per praedicta apparet, quod papa super omnes habet iurisdictionem et potestatem de iure, licet non de facto, unde per hanc potestatem, quam habet papa, credo quod si gentilis, qui non habet legem, nisi naturae, si contra legem naturae facit, potest licite puniri per papam, ar. Genes. 19, ubi habes, quod Sodomitae qui contra legem naturae peccabant puniti sunt a Deo, cum autem Dei iudicia sint nobis exemplaria, non video quare papa, qui est vicarius Christi hoc non possit, et etiam dummodo facultas adsit, et idem dico si colant Idola."

153. Innocent IV, *Apparatus* to X 3.34.8, no. 5 (Frankfurt, 1570, fol. 430^r): "Item Iudaeos potest iudicare papa, si contra legem euangelii faciunt in moralibus, si eorum praelati eos non puniant, et eodem modo, si haereses circa suam legem inueniant, et hac ratione motus Papa Gregorius et Innocentius mandauerunt comburi libros talium, in quos multae continebantur haereses, et mandauerunt puniri illos, qui praedictas haereses sequerentur, vel docerent."

154. Innocent IV, *Apparatus* to X 3.34.8, no. 8 (Frankfurt, 1570, fol. 430^v): "Item licet non debeant infideles cogi ad fidem, quia omnes libero arbitrio relinquendi sunt, et sola Dei gratia in hac vocatione valeat, 45 dist. de Iudaeis [c. 5]; tamen mandare potest papa infidelibus quod admittant praedicatores Euangelii, in terris suae iurisdictionis, nam cum omnis creatura rationalis facta sit ad Deum laudandum, senten. 2 di. si queritur [*fortasse*: Petrus Lombardus, *Sententiae* 2.40.2 (*PL*, 192:747-48)]; si ipsi prohibent praedicatores praedicare peccant, et ideo puniendi sunt."

155. Innocent IV, *Apparatus* to X 3.34.8, no. 9 (Frankfurt, 1570, fol. 430^v): "In omnibus autem praedictis casibus et in aliis, ubi licet Papae eis aliquid mandare, si non obediant compellendi sunt brachio seculari, et indicendum est bellum contra eos per Papam, et non per alios, ubi quis de iure suo contendit, nec est contra 2 quaestio 1 multi [c. 18] ubi dicitur, quod non pertinet ad nos iudicare de his qui foris sunt, quia intelligitur quod non debemus eos iudicare excommunicando, vel compellendo ad fidem, ad quam sola Dei gratia vocantur, 45 dist. de Iudaeis [c. 5]."

156. Hostiensis, *Lectura* to X 3.34.8, no. 26 (Venice, 1581, vol. 3, fol. 128^{vb}): "Mihi tamen videtur quod in adventu Christi omnis honor et omnis principatus et omne dominium et iurisdicatio de iure et ex causa iusta et per illum qui supremam manum habet, nec arrare potest, omni infideli subtracta fuerit et ad fideles translata; quod hoc iusta causa fuerit probata Eccle. x, Regnum a gente in gentem transfertur propter iniustitias et iniurias et contumelias et diuersos dolos, quod hoc factum sit comprobatur supra de consti., translato [X 1.2.3] et hoc in persona Christi filii Dei vivi, qui non solum sacerdos fuit, sed et Rex: Luce i."

157. Hostiensis, *Lectura* to X 3.34.8, no. 27 (Venice, 1581, vol. 3, fol. 128^{vb}): "[U]nde constanter asserimus quod de iure infideles debent subici fidelibus, non econtra, ut patet in eo quod legi et notavi infra de iudeis, c. i in fi. et c. multorum et c. etsi iudaeos § inhibemus [X 5.6.1, 2, 13]. Concedimus tamen quod infideles, qui dominium ecclesiae recognoscunt, sunt ab ecclesia tolerandi, quia nec ad fidem precise cogendi sunt, ut dictum est supra. Tales etiam possunt habere possessiones et colonos christianos et etiam iurisdictionem ex tolerantia ecclesiae. Etsi de eis contenti non sunt, vel abutuntur, sibi imputent, quia priuelegium meretur amittere etc., super quo vide quod legi et notavi de iudaeis, multorum [X 5.6.13]."

158. Hostiensis, *Summa aurea*, lib. 1, tit. De treuga et pace [X 1.34] (Lyon, 1537, fol. 59^{ra}).

159. See, among others, Kenneth J. Pennington, Jr., "Bartolomé de las Cases and the Tradition of Medieval Law," *Church History* 39 (1970): 1-13; James Muldoon, "A Canonistic Contribution to the Formation of International Law," *The Jurist* 28 (1968): 265-79; D. Carro Venancio, *La teologia y los teólogos-juristas españoles ante la conquista de América*, 2 vols. (Madrid: Centro de Estudios Históricos, 1935).

160. C. 23 q. 3 c. 3; C. 23 q. 4 c. 48.
161. C. 15 q. 6 c. 2.
162. C. 23 q. 5 d.p.c. 48; C. 23 q. 6 pr. and d.p.c. 4.
163. Rolandus, *Summa* to C. 23 q. 7 (ed. Thaner, p. 7); see also the *glos. ord.* to C. 23 q. 7 pr. ad v. *nunc autem*.
164. Stickler, "Der Schwerterbegriff bei Huguccio," p. 217, n. 4.
165. Third Lateran Council c. 27 (*COD*, pp. 200–201); Pissard, *La Guerre sainte*, pp. 27, 31; G. Sicard, "Paix et guerre dans le droit canon du XII^e siècle," *Cahiers de Fanjeaux* 4 (Toulouse, 1969), 89–90, n. 37; Austin P. Evans, "The Albigensian Crusade" in *A History of the Crusades*, ed. Kenneth M. Setton et al., 2d ed. (Madison: University of Wisconsin Press, 1969), 2:282. Similar provisions were made by the fourth Lateran Council (1215) c. 3 (*COD*, pp. 209–11); see also *Comp. V* 1.17.1 (X—).
166. Evans. "The Albigensian Crusade," pp. 284–85.
167. *Glos. ord.* to C. 23 q. 5 c. 32 ad v. *omnes*: "Si argo aliqui heretici sunt in una ciuitate, tota ciuitas potest exuri: et sic ecclesia uel ciuitas punitur pro delicto personarum, ut 25 q. 2 ita nos [c. 25] et C. de sacrosanct. eccl., iubemus nullam (*Cod.* 1.2.10); Quid iuris sit de hoc, notatur in illo borcardo, an delictum persone etc. Item habes hic, quod heretici occidi potest, ut supra eadem q. 4 quando [c. 19]. Joan."
168. Evans, "Albigensian Crusade," pp. 288–89.
169. Raymond de Peñafort, *Summa* 2.1.10 (Roma, 1603, pp. 157–58): "Idem dico in Episcopo, vel iudice ecclesiastico, qui ob defensionem rerum ecclesiasticarum, vel fidei inuocat, et hortatur contra violentos brachium seculare; et etiam potest eos sequi hortando eos, non ut eos occidant, vel mutilent ipsos violentos, haereticos, vel paganos, sed ut ecclesiasticam fidem et patriam liberent, et defendant, et terram ab infidelibus occupatam redigant ad cultum fidei Christianae: et super hoc facit ecclesia quotidie remissiones magnas: et licet ibi, hinc inde aliqui occidantur, non est hoc praelato, vel ecclesiae imputandum, immo peccaret, nisi se opponeret contra tales: posset enim dici, mercenarius est, qui non est pastor, etc. [John 10:12] et esset merito deponendus, ut supra de haereticis puniuntur, ver. archiepiscopi. Probatur hoc per iura supradicta, et 23 q. 3 Maximianus [c. 2] et q. 8 igitur et scire et omni et hortatu et ut pridem [c. 7–10, 17]. De illis autem, qui mouent arma contra tales propter obedientiam, iustitiam, et zelum fidei, certum est, quod merentur. Immo peccarent alias; et possent cogi principes per censuras ecclesiasticas ad purgandas suas prouincias ab haeretica prauitate, necnon et matrem suam ecclesiam defendendam; cum propter hoc contulerit eis Dominus principatus, et regna, 23 q. 5 principes et Regum et administratores et si audieris et omnium [c. 20, 23, 26, 32, 46] et q. 1 quid culpatur in bello [c. 4]."
170. Hostiensis, *Summa aurea*, lib. 3, tit. De voto et voti redemptione [X 3.34], no. 19 (Lyon, 1537, fol. 178^{va}): "In quo casu et a quo crux debeat predicare. Et quidem contra sarracenos et hereticos predicari potest et debet, infra eodem quod super his [X 3.34.8] et c. se. et c. fi. [X 3.34.9–10] et infra de here. excommunicamus [X 5.7.13]. § Sed nunquid contra schismaticos et inobedientes et rebellen predicari potest? Hoc non est expressum in iure et ideo vidi in alemania aliquos super hoc dubitare, asserentes quod contra christianos non videbatur equum et honestum quod crux assumeretur maxime quia non inuenitur in iure expressum, arg. pro ipsis supra de transla. episcopi vel electi, inter corporalia [X 1.7.2] § sed denique, ii q. v consuluisti [c. 20], supra ne sede, vacan., illa [C. 3.9.2], sed certe non semper debet requiri ius expressum, quia plura sunt negotia quam vocabula, ff. de prescri. ver. 1. iiii [Dig. 19.5.4]; ideo iure deficiente est de similibus ad similia procedendum, ff. de legi., non possunt [Dig. 1.3.12], supra de rescrip., inter cetera [X 1.3.4] et naturalibus utendum est rationibus, nam et lex ratio commendat, dist. i consuetudo [c. 5], et quod naturalis ratio et c. insti. de iure naturali § quod vero naturalis ratio [Inst. 1.1.2.1]. Dicas

ergo quod si crux transmarina que pro acquisitione seu recuperatione terre sancte tantummodo predicat videtur merito predicanda, multo fortius pro unitate ecclesie conseruanda predicanda est crux contra schismaticos cismarinam, arg. xxiii q. i loquitur et c. seq. et c. schisma [c. 18, 34], xvi q. fi., sicut domini vestimentum [C. 16 q. 7 c. 19]; nec enim filius dei in mundum venit, nec crucem subiit ut acquireret terram, sed ut captiuos redimeret et peccatores ad penitentiam reuocaret, nec aridam imo catholicam ecclesiam desponsauit, cum ergo maius periculum immineat in hac ultima quam in prima, quia pretiosior est anima quam res, C. de sacrosan. eccl., sancimus [Cod. 1.2.21], id est magis subueniendum est, xlii di. quiescamus [c. 2].”

171. Cf. Russell, *Medieval Theories of the Just War*, p. 194.

XI

The Limits of the War-Making Power: The Contribution of the Medieval Canonists



☐ The pastoral letter on war and peace of the Catholic bishops of the United States deals with a problem that has perplexed Western Christian thinkers since the beginnings of Christianity itself.¹ The American bishops' pronouncement is only the most recent in a long chain of efforts by the authorities of the Western Church to analyze the nature of war and to spell out both its theoretical and practical consequences for believers who, however much they might wish to do so, cannot ignore the fact that socially sanctioned violence has been a feature of societies from the beginning of human history. Christian reactions to the phenomenon of warfare can only be understood, as the pastoral letter itself points out, within the historical context of the doctrinal and legal development of Christian institutions. I propose to examine one segment of that historical context, since I believe that the record of some past efforts by earlier bishops to impose moral and legal limits on the participation by Christians in warfare may provide a useful perspective in trying to understand and evaluate the American pastoral letter. The record may also raise some questions about the strengths and weaknesses of the approach that the bishops' letter embodies.

The segment of the past record that I wish to snip out and examine involves the efforts of the medieval Church's legal experts to create a system for limiting warfare, based upon the moral authority of the Church, but implemented through legal processes in the Church's courts. I shall deal with efforts to achieve this goal during roughly a 200-year period, from the middle of the 12th century to the middle of the 14th. This 200-year period was one in which the Church, along with the rest of Western society, was undergoing a fundamental, indeed a radical, transformation of its legal system. Both civil and canon lawyers during these two centuries were in the process of fashioning a broad range of new methods for dealing with some basic human problems; in

1. National Conference of Catholic Bishops, *The Challenge of Peace: God's Promise and Our Response; A Pastoral Letter* (Washington, D.C.: U.S. Catholic Conference, 1983; cited hereafter as *Challenge of Peace*), 1.A, "Peace and the Kingdom."

the process they created new types of social structure that have proved over the past 700 years or so to be extraordinarily durable and effective. Among their creations were the concept of the corporation, which is still very much with us, together with a corporate interpretation of government, in which are rooted our basic notions of representation and consent, of parliamentary government, of the rule of law, and of constitutional limitations on the power of rulers. Many of the basic concepts that undergird modern ideas about social structure and government, in other words, emerged from the ideas, beliefs, and intuitions of the learned lawyers of that period. Their ideas about the uses and limitations of government power still play powerful roles in shaping and conditioning the ways in which we approach many of those fundamental problems in the Western world today.²

It is important to realize that the men—and the fact that they were all men was a result of their society's concepts about sex roles, many features of which have unfortunately also survived to the present—were not solely academic theorists, spinning out ideas in splendid isolation from social realities. They were indeed academics for the most part, but they were also men who were often employed as counselors and advisers to monarchs and municipalities, to merchants, popes, and prelates; accordingly they were often in a position to influence and to help shape the ways in which institutions were structured and to determine the limits within which institutions functioned in the world of power, politics, and profit.

Among the many problems that concerned the civilians and canonists who taught in the law faculties of the principal European universities during this period was the problem of war and peace, more specifically the problem of the basis of the war-making power of governments, the limitations within which that power might legitimately be employed, and the consequences of its use—particularly, as we shall see, the consequences for property rights and liability for damages incurred as a result of warfare. They were engaged in constructing a law of war. The raw materials that they used consisted of some basic doctrinal concepts that they borrowed from the Fathers of the Church (principally St. Augustine), together with some notions that they found at hand in the Roman law as codified by the sixth-century Byzantine Emperor Justinian, and the usual and customary practices of contemporary armies and their commanders. This was a peculiar mixture and one might think a rather unpromising one; but despite its odd components, the structure that they fashioned turned out to be workable, if not elegant in all its details.

2. Brian Tierney, *Religion, Law, and the Growth of Constitutional Thought* (Cambridge, England: Cambridge University Press, 1982).

Now the very idea of a law of war may seem at worst absurd and at best paradoxical, since war itself results from the failure of peaceful and lawful processes to produce results satisfactory and acceptable to the parties involved in a dispute. But both medieval and modern efforts to impose some limitations on the way in which warfare is conducted testify to a persistent belief, or at least a recurrent hope, that parties to a conflict, even a violent one, can at least agree on certain fundamental conditions that will govern the ways in which that conflict will be conducted. One problem that worries critics who deny the principle that a law of war is either desirable or possible is of course the problem of sanctions and their enforcement. Who is to penalize those who break the rules? How can sanctions be imposed save by the use of force? And that, of course, means further warfare, presumably successful warfare, on the part of the enforcer.³

The argument that the difficulty of imposing sanctions makes a law of war impossible or fictional is flawed, however, by the fact that it rests on the Austinian assumption that only those laws are real and meaningful that carry with them readily enforceable penalties and that the purpose of law is always and necessarily to punish wrongdoers.⁴ But in fact law has other functions than punishment and revenge; law also serves as a means of enunciating and defining basic social norms, of establishing and specifying standards of conduct that a community finds acceptable. Laws do not necessarily guarantee that every infraction of those norms and standards can or will be punished. We are all aware of many situations in which infraction of a statute or regulation does not regularly result in the punishment that the law provides. Further, effective legal sanctions do not necessarily rest on the use of forcible coercion—at least not unless you define forcible coercion in some very peculiar ways. If, for example, a statute provides that under certain circumstances contracts must be reduced to writing or else they will not be enforced by the courts (as did the Statute of Frauds (1677)§ 4), you have created a negative sanction that in some sense might be called coercion, but it would stretch the meaning of words rather drastically to call it forcible.

Moreover the fact that traffic regulations are often not rigorously enforced does not mean that speed limits are not worth having, nor is the

3. M. D. R. Foot, "Introduction" to Michael Elliott-Bateman, ed., *The Fourth Dimension of Warfare* (Manchester: Manchester University Press; New York: Praeger, 1970), p. ix; Georg Schwarzenberger, "Functions and Foundations of the Laws of War," *Archiv für Rechts- und Sozialphilosophie* 44 (1958), 351–369.

4. John Austin, *Lectures on Jurisprudence, or the Philosophy of Positive Law*, 4th ed., rev. by Robert Campbell, 2 vols. (London: J. Murray, 1873), especially Lectures 1 and 23 at 1:98–102, 467–469; W. Jethro Brown, *The Austinian Theory of Law* (London: J. Murray, 1906), pp. 1–3, pp. 6–14.

use of nonforcible penalties for offenders necessarily less effective than the use of force. Such laws and regulations serve two real and important functions. First, they have a deterrent function—even occasional enforcement, coupled with a reasonable fear that there might be successful enforcement in your particular case, will deter some potential offenders, though not as many as one might wish. Second, and more important, laws and regulations serve notice on all of us that society has set certain standards of conduct and that when we ignore or contravene them we are doing wrong, whether we happen to agree with the rules or not. That function of enunciating social consensus is not without utility for society at large. The law draws a line, establishes a boundary. We may trespass, of course; we may frequently trespass with impunity. But the rules make us conscious of our trespasses, while sanctions, including nonforcible ones, deter us from trespassing even more than we might otherwise do. They also instill a wholesome fear that this time, or the next, or maybe the time after that, we may get caught and that the experience will either be unpleasant or unprofitable or both.⁵

But I have ventured far from my subject, into the perilous waters of speculative jurisprudence, where no right-thinking historian is very comfortable—or very safe. Let me return to the issues at hand, in the hope that I have demonstrated that the attempt to construct laws of war may not necessarily be an exercise in futility.

The efforts of medieval jurists, and the canonists in particular, to construct a system of legal limitations on the war-making power were anchored in the Augustinian concept of the just war, as the canonists found that idea expounded in Gratian's *Decretum*, which was completed about the year 1140.⁶ It is not my purpose to deal with the problems that just-war theory and its development pose for historians. I simply wish to make the point that the just war, as a juristic category, played a vital role

5. On the issues implied here, especially the problem of the relationship between law and coercion, see H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), pp. 20–25, pp. 221–226, and *Punishment and Responsibility: Essays in the Philosophy of Law* (London: Oxford University Press, 1968); Roscoe Pound, *Social Control through Law* (New Haven, Conn.: Yale University Press; London: Oxford University Press, 1942), pp. 32–33, pp. 107–108. But see also the discussion of these issues in Lon L. Fuller, *The Morality of Law*, rev. ed. (New Haven, Conn.: Yale University Press, 1969), especially pp. 133–151 and 187–242.

6. On Gratian and the *Decretum* see especially Stephan Kuttner, “The Father of the Science of Canon Law,” *The Jurist* 1 (1941), 2–19, and “Graziano: l'uomo e l'opere,” *Studia Gratiana* 1 (1953), 27–29; John T. Noonan, Jr., “Gratian Slept Here: The Changing Identity of the Father of the Systematic Study of Canon Law,” *Traditio* 35 (1979), 145–172; Gabriel Le Bras, Charles Lefebvre, and Jacqueline Rambaud, *L'âge classique, 1140–1378: Sources et théorie du droit*, Vol. 7 of *Histoire du droit et institutions de l'église en occident* (Paris: Sirey, 1965), pp. 49–129; Gérard Fransen, “La date du Décret de Gratien,” *Revue d'histoire ecclésiastique* 51 (1956), 521–531.

in the development of doctrines about the limitations of warfare, because the rules that the canonists developed for defining the consequences of actions in war were grounded on the distinction between just and unjust wars.⁷ One further basic point should be stated without further elaboration, namely, that the jurists with whom I am dealing never embraced the position that it was the aim or even the business of the Church to eliminate war altogether from human affairs. They were concerned, instead, to establish limits within which war could justifiably be waged and to penalize participants in wars that transgressed those limits.⁸ The canonists were not, in principle, committed to pacifism. Indeed, Giovanni da Legnano (d. 1383), the author of the earliest full-scale treatise on the law of war, argued that war stems from divine law and that God not only allows wars to happen but also made positive provision for war as an instrumentality of human government and society.⁹ Giovanni further maintained that wars had their primordial origin in nature and thus that war was an element in the very fabric of the world as it came from the hand of its creator.¹⁰ Two hundred years earlier, however, the anonymous author of the *Summa "Elegantius in iure diuino"* (written ca. 1169) had urged the view (common among the civilians) that war was a product of the law of nations (*ius gentium*), from which flowed the rules that should govern its conduct.¹¹ But whether war was a part of God's plan of creation or whether it arose among the practices of the *ius gentium*, the canonists did not consider warfare an aberrant kind of human conduct. It was a routine reality, and they were prepared to deal with it on that basis.

Already in the mid-12th century Gratian had inserted in his *Decretum* a descriptive analysis of the law of war, which he borrowed from St. Isidore (ca. 560–636), the learned bishop of Seville. As Isidore and Gratian described it, the law of war dealt with the formalities of initiat-

7. On just-war theory in Gratian, see Frederick H. Russell, *The Just War in the Middle Ages*, Cambridge Studies in Medieval Life and Thought, 3rd ser., Vol. 8 (Cambridge, England: Cambridge University Press, 1975), pp. 55–58.

8. Fermino Poggiaspalla, "La chiesa e la partecipazione dei chierici alla guerra nella legislazione conciliare fino alle decretali di Gregorio IX," *Ephemerides iuris canonici* 15 (1959), p. 140.

9. Giovanni da Legnano, *Tractatus de bello, de represaliis, et de duello* 10, ed. Thomas Erskine Holland, *Classics of International Law*, Vol. 8 (Oxford: Printed for the Carnegie Institution of Washington at the Oxford University Press, 1919), pp. 85–90.

10. Giovanni da Legnano, *De bello* 11, ed. Holland, pp. 90–91.

11. *Summa 'Elegantius in iure diuino' seu Coloniensis* 1.7, ed. Gerard Fransen and Stephan Kuttner, *Monumenta iuris canonici*, Ser. A, Vol. 1 (New York: Fordham University Press; Città del Vaticano: Biblioteca Apostolica Vaticana, 1969–; in progress), 1:2; Odofredus, *Lectura super Digesto veteri* 1.1.4 v. *bella orta sunt* (Lyon: Joannes Pullon, 1552; repr. Bologna: A. Forni, 1968), fol. 7ra.

ing a state of war, with the organization, structure, and discipline of armies, and with the rules for the division of property acquired as a result of war.¹² The early commentators on the *Decretum* disagreed sharply over the question of whether the law of war should be considered part of the civil law.¹³ The view that ultimately prevailed held that wars proclaimed by a prince were indeed a civil law institution. Now this labeling has more than theoretical significance. Since wars proclaimed by a prince or other lawful authority were, when fought for a just purpose, an instrument of public law, it followed that in those wars alone could adversaries be considered public enemies.¹⁴ The importance of that, in turn, lay in the fact that as a matter of civil law there was no limit on the taking of spoils and prisoners from public enemies and property acquired in such a war was held to be acquired by a just title.¹⁵ The courts, in other words, would recognize as rightful possessions the property acquired as a result of hostilities against public enemies, but they would not protect the title to property acquired in other types of hostilities. This definition enabled the jurists to distinguish, for example, between property acquired in just war, which was protected, and property acquired by a gang of robbers, which was not legally protected and which the courts would in due course restore to the rightful owner.

Both the army as a whole and its individual members, when fighting in a just war, were acting as agents of the ruler, and this agency conferred upon them a generous measure of legal immunity and protection.¹⁶ Many things are lawful during a just war that are not lawful in

12. D. 1 c. 10. Gratian and the other texts of the *Corpus iuris canonici* are cited throughout from the standard edition by Emil Friedberg, 2 vols. (Leipzig: B. Tauchnitz, 1879; repr. Graz: Akademische Druck-und Verlagsanstalt, 1959), using the conventional canonistic citation system.

13. Rufinus, *Summa decretorum* to D. 1 c. 10 pr., ed. Heinrich Singer (Paderborn: F. Schöningh, 1902; repr. Aalen: Scientia Verlag, 1963), pp. 10–11; Stephan of Tournai, *Die Summa des Stephanus Torniacensis über das Decretum Gratiani* to D. 1 c. 10 v. *ius militare*, ed. Johann Friedrich von Schulte (Giessen: Emil Roth, 1891; repr. Aalen: Scientia Verlag, 1965), p. 11; *The Summa Parisiensis on the Decretum Gratiani* to D. 1 c. 10, ed. Terence P. McLaughlin (Toronto: Pontifical Institute of Medieval Studies, 1952), p. 3.

14. This concept is very ancient; an apparent reference to it appears in Gaius, *Institutes* 3.94, ed. and transl. Francis de Zulueta, 2 vols. (Oxford, England: Clarendon Press, 1946–53) 1:182. A formal definition was offered by Ulpian, *Institutiones* 1, in Dig. 49.15.24. The *Digest* and the rest of the *Corpus iuris civilis* is cited throughout from the critical edition in 3 volumes by Paul Krueger, Theodor Mommsen, Rudolf Schoell, and Wilhelm Kroll (Berlin: Weidmann, 1872–95). Ulpian's definition was familiar to the 12th-century canonists, who paraphrased it in their commentaries on the *Decretum*; see Stephen of Tournai, *Summa* to D. 1 c. 10 v. *in hostes*, ed. Schulte, p. 11; Rufinus, *Summa* to D. 1 c. 10 v. *egressio in hostes*, ed. Singer, p. 11.

15. Maurice H. Keen, *The Laws of War in the Late Middle Ages* (London: Routledge & Kegan Paul, 1965), p. 70.

16. Ulpian, *Ad edictum* 6, in Dig. 49.16.1.

peacetime, noted Cino da Pistoia (1270–1336/37), “because what is just depends upon the circumstances.”¹⁷ Cino’s observation went straight to the heart of the matter: A just war had legal consequences that did not flow from other kinds of war. My point is that the concept of the just war, as the medieval canonists and civilians used it, was something more than simply a moral judgment. Just war created a chain of consequences that were of central importance to the participants in the conflict, for in a very practical sense the outcome of the conflict depended on those consequences.¹⁸ Just wars vested property rights in the victor and stripped them from the vanquished; other wars did not. Just wars shielded the participants from liability for the loss of life and property in the conflict; other wars did not. The concept of just war, like many other legal concepts, was shrouded in the language of moral judgment, but for participants in these conflicts the moral overtones tended to be less immediately relevant than the tangible outcome.

The hypothesis that I wish to examine, therefore, is this: that the canonists of the classical period (i.e., between about 1140 and about 1378) sought to restrict the power to make war by imposing limitations on the definition of just war. By confining the category of just war within well-defined boundaries, they sought to circumscribe the effective power of monarchs to wage war by making the venture so potentially costly that princes would be deterred from fighting wars, save under the circumstances and within the rules that the jurists defined.

The function of law, according to the *Summa “Elegantius,”* is to restrain violence and dispel discord.¹⁹ In pursuit of this function, the canonists, as I have noted earlier, found at hand in the *Decretum* of Gratian a simplified version of the Augustinian definition of a just war: It must be proclaimed by public authority, prosecuted for a just purpose, and fought by permissible means.²⁰ Wars fought under these circumstances legitimized actions that otherwise would constitute crimes.²¹ But not every action undertaken in a just war was permissible, for the canonists also had at hand in Gratian’s work a brief catalogue of types of conduct that were not protected, even in a just war. That list included indiscrim-

17. Cino da Pistoia, *In Codicem et aliquot titulos primi Pandectarum tomi, id est Digesti veteris, doctissima commentaria* to Cod. 6.50.1 at 1, 2 vols., ed. Nicolo Cisnerio (Frankfurt a/M.: Johannes Feyerabend, 1578; repr. Torino: Bottega d’Erasmus, 1964), fol. 423ra: “Not. primo quod aliud est ius tempore belli et aliud tempore pacis. . . . Et per hoc colligitur, quod aliud est iustum tempore guerrae et aliud est iustum tempore pacis, quia illud est iustum quod cuilibet in tempore suo expedit . . . et ita oportet legislatorem legem secundum tempora condere.”

18. Keen, *Laws of War*, pp. 64–65.

19. *Summa “Elegantius”* 1.4, ed. Fransen-Kuttner, 1:2.

20. c. 23 q. 2 c. 1–2 and d.p.c. 2.

21. c. 23 q. 1 c. 5 and d.p.c. 7; Keen, *Laws of War*, p. 65.

inate killing, atrocities inflicted as revenge, unremitting pursuit of the vanquished, and unprovoked aggression.²² On the other hand, some types of action that in other conflicts would not only be morally reprehensible but would also create legal liabilities might be permitted in a just war, according to the Augustinian texts in the *Decretum*. Notable among these was the use of subterfuge, ambush, and surprise as tactical devices.²³

Inherent in all this was the germ of a doctrine of limitations on the war-making power. Gratian's texts described three categories of conditions under which just war could be waged: One category defined the circumstances under which the conflict was initiated; the second limited the objectives of the warring powers; the third defined the means that might be legitimately employed in combat. But the language and the content of the texts that Gratian set forth were vague, their meanings were hard to pin down, and their implications were hazily spelled out.

Action to remedy some of these defects was soon in coming. The moving force behind one set of actions was Pope Alexander III (1159–81), the occasion the Third Lateran Council (1179). There the pope proposed and the bishops approved two canons that sought to impose limits on just wars. Both canons represented revivals of earlier efforts to limit warfare, but the new canons were designed, it appears, to specify in greater detail the implications of just-war doctrine as it appeared in the *Decretum*. The canon *Treugas autem* prescribed narrow limits on the periods of the year and even the days of the week when war could lawfully be waged. *Treugas autem* forbade combat during the penitential seasons of Lent and Advent and in addition enjoined combatants to lay down their arms from Thursday through Sunday of each week. The council commanded bishops to excommunicate those who failed to observe the prescribed truce periods.²⁴ The canon *Innovamus* sought in addition to prohibit attacks on certain groups of persons by warring parties: the clergy, monks and laybrothers, travelers, merchants, and peasants engaged in agricultural labor and their livestock were declared not to be legitimate targets for hostile action. Again, bishops were to excommunicate those who failed to observe this rule of immunity.²⁵ Shortly after the council ended, *Treugas autem* and *Innovamus* began to find their way into the law collections compiled as reference books for

22. c. 23 q. 1 c. 4.

23. c. 23 q. 2 c. 2.

24. III Lateran Council (1179) c. 21, in *Conciliorum oecumenicorum decreta*, 2d ed., by Giuseppe Alberigo et al. (Basel: Herder, 1962; cited hereafter as COD), p. 198; Ferrino Poggiaspalla, "La condotta della guerra secondo una disposizione del III Concilio Lateranense," *Ephemerides iuris canonici* 12 (1956), 379–386; Russell, *Just War*, pp. 183–186.

25. III Lateran Council (1179) c. 22, in COD, p. 198.

canonists and into the textbooks used for the teaching of canon law in the universities. Accordingly, these canons soon became the subject of discussion by law professors in the course of their lectures.²⁶

At roughly the same time that these things were happening, some of the collections of recent law that were being compiled to supplement Gratian's *Decretum* also began to feature one further enactment that sought to impose a significant limitation on contemporary warfare. This canon, *Artem illam*, had been adopted much earlier, by the Second Lateran Council in 1139.²⁷ Although Gratian had not chosen to include *Artem illam* in his *Decretum*, canonists from the late 1170's onward began to insert it in anthologies of current law, and it ultimately found its way, together with *Treugas autem* and *Innovamus*, into the great official compendium of post-Gratian canons, the *Liber Extra*, promulgated in 1234 by Pope Gregory IX (1227–41).²⁸ *Artem illam* is particularly interesting because it represents the first and, to the best of my knowledge, the only attempt by medieval lawgivers to outlaw use of a new and, to contemporary eyes, a particularly frightening kind of weapon.

26. *Treugas autem* appears in at least a dozen early decretal collections: 1 *Collectio Parisiensis* 9; Appendix *Concilii Lateranensis* 23 (21); *Collectio Lipsiensis* 21; *Collectio Bambergensis* 56.8; *Collectio Casselana* 51; *Collectio Brugensis* 23.3; 1 *Collectio Alcobacensis* 10; *Collectio Ambrosiana* 65; *Collectio Floriacensis* 3; *Collectio Cusana* 176; *Collectio Dunelmensis prima* 2.45; and *Rotomagensis prima* 24.11. *Innovamus* also appears in all of these collections, save for 1 *Par.* and *Cus.* (*App. Lat.* 24(26); *Lips.* 26; *Bamb.* 56.19; *Cass.* 12.4; *Brug.* 21.1; 1 *Alc.* 8; *Ambr.* 71; *Flor.* 15; 1 *Dun.* 2.44; 1 *Rot.* 19.2). See the analyses of these collections in Emil Friedberg, *Die Canones-sammlungen zwischen Gratian und Bernhard von Pavia* (Leipzig: B. Tauchnitz, 1897; repr. Graz: Akademische Druck- u. Verlagsanstalt, 1958) and Walter Holtzmann, *Studies in the Collections of Twelfth-Century Decretals*, ed., rev., and transl. C. R. Cheney and Mary G. Cheney, *Monumenta iuris canonici*, Ser. B., Vol. 3 (Città del Vaticano, 1979). Both canons then appeared in the *Prima compilatio antiqua* of Bernard of Pavia; *Quinque compilationes antiquae necnon collectio canonum Lipsiensis*, ed. Emil Friedberg (Leipzig: B. Tauchnitz, 1882; repr. Graz: Akademische Druck- u. Verlagsanstalt, 1956) at 1 *Comp.* 1.24.1–2. From 1 *Comp.* the two canons passed into the *Liber Extra* at X 1.34.1–2.

27. II Lateran Council (1139) c. 29, in COD, p. 179; Paul Fournier, "La prohibition par le IIe concile de Latran d'armes jugées trop meurtrières," *Revue générale du droit international public* 23 (1916), 471–479; James A. Brundage, "Holy War and the Medieval Lawyers," in *The Holy War*, ed. Thomas P. Murphy (Columbus: Ohio State University Press, 1976), p. 115.

28. *Artem illam* was much less widely circulated than *Treugas autem* and *Innovamus*; it appears in 2 *Paris.* 12.1, compiled shortly before 1179, and then turned up in *Lips.* 27.4. The canon subsequently passed into 1 *Comp.* 5.19.1 and thence into X 5.15.1. Russell, *Just War*, pp. 70–71, argues that Gratian omitted *Artem illam* because he disagreed with its basic premise. The argument is problematical, since it assumes that Gratian systematically left out canons that he found uncongenial; in fact, this runs counter to Gratian's method of dealing with opinions opposed to his own and, indeed, to the fundamental premise on which his work was constructed. Gratian, after all, entitled it a *Concordia discordantium canonum* precisely because its major contribution was to pose and resolve antinomies among the canons.

The weapon was the crossbow and its heavier companion, the ballista. These devices represented an innovation of considerable importance in military technology, for they were essentially armor-piercing weapons. The crossbow was the portable version and could be used by an individual infantryman, while the ballista was a larger scale device of the same basic design, but mounted on a wheeled frame, something like a caisson. Both weapons featured a metal bow, usually of steel, with sufficient tensile resistance that the weapon had to be tensioned for use by means of a winch, held in the ready position by a ratchet, and discharged by a trigger mechanism. Both weapons fired pointed metal bolts, or quarrels, with a high degree of accuracy and sufficient velocity to penetrate most types of body armor then in use.²⁹ Although the crossbow and the ballista had been in limited use in Europe from the 11th century,³⁰ these weapons achieved notoriety in the aftermath of the Battle of Legnano (May 29, 1176), where the crossbows of the army of the Lombard League inflicted a decisive defeat on the cavalry forces of the Emperor Frederick Barbarossa (1152–90).³¹ What particularly horrified contemporaries about this encounter was the fact that crossbows and ballistas were infantry weapons. They enabled mere foot soldiers, who were not members of the feudal nobility, to slaughter fully armored knights on horseback, who up to this point had generally considered themselves invincible against any other type of force they might meet, an opinion that had been powerfully reinforced by the relatively consistent victories of European knights in their encounters with Turkish, Syrian, and Egyptian forces during the first Crusade (1095–99) and its successors. The victory of the Lombard infantry at Legnano abruptly reversed this basic tenet of European warfare. Not for the last time, a breakthrough in military technology carried the implicit threat of social upheaval as well. It is no coincidence, I am sure, that within a year or two following the battle of Legnano, the long-ignored ban on the use of the crossbow and ballista enacted by the Second Lateran Council suddenly cropped up in the new lawbooks, and lawyers began to ponder the implications of the ban on the use of these new weapons. The can-

29. Sir Ralph William Frankland Payne-Gallway, *The Crossbow, Mediaeval and Modern, Military and Sporting*, 2nd ed. (London: Holland Press, 1958), pp. 4–16, 20–21. More recently, Vernard Foley, George Palmer, and Werner Soedel, "The Crossbow," *Scientific American* 252/1 (January 1985), 104–110.

30. William the Conqueror employed crossbowmen at the Battle of Hastings, and Anna Comnena apparently considered them such a novelty that she gave a detailed description of the ones employed by Western soldiers in the first Crusade; Anna Comnena, *Alexiad* 10.8.6, ed. and transl. Bernard Leib, 3 vols. (Paris: Les Belles Lettres, 1943–45) 2:317–18; Sir Charles Oman, *A History of the Art of War in the Middle Ages*, 2 vols., 2nd ed. (London: Methuen, 1924) 1:137–140.

31. Oman, *Art of War* 1:445–449.

onists were not the only ones alarmed by these events. One of the demands that the English rebels forced King John to agree to in 1215 required the king to banish his foreign crossbowmen from the kingdom.³²

One striking feature of *Artem illam* is that the canon pointedly prohibited the use of crossbows and ballistas against Christian and Catholic opponents. The clear implication was that use of these prohibited weapons against heretics and non-Christians was permissible. The canonists who commented on this text were quick to note the loophole. Bernard of Pavia, writing between 1191 and 1198, declared that under the terms of *Artem illam* Christian warriors were free to use crossbows against "pagans and persecutors of the Christian faith," and by this he clearly had in mind the Saracen opponents of the Crusaders in the Levant and perhaps also the pagan Livonians, Letts, and Estonians in the Baltic, against whom German bishops and warriors were organizing expeditions of conversion and conquest at precisely the time Bernard was writing.³³

St. Raymond of Penyafort (ca. 1180–1275) carried the matter a bit further in his *Summa de penitentia* (1st ed., 1226/28; rev., 1234/36). After reiterating the observations of Bernard of Pavia about using crossbows against non-Christians and pagans, Raymond added: "Some people say that this weapon can be used in a just war against Christians" and then cited a passage from St. Augustine in support of this remarkable contention.³⁴ I call it remarkable, because it contradicts the plain language of the canon itself, language with which Raymond was unquestionably familiar, since he had edited the text of the canon as it appeared in the *Liber Extra* and had chosen to leave intact the restrictive phrase *adversus christianos et catholicos* of the original enactment. By ascribing the notion to "some people" (*dicunt quidam*), to be sure, Raymond distanced himself from it and refrained from expressing any opinion on the merits of this interpretation.

32. *Magna carta* 51, in William Stubbs, ed., *Select Charters and Other Illustrations of English Constitutional History from the Earliest Times to the Reign of Edward the First*, 9th ed., rev. H. W. C. Davis (Oxford, England: Clarendon Press, 1913), p. 299; Oman, *Art of War* 2:58.

33. Bernardus Papiensis, *Summa decretalium* 5.19, ed. E. A. T. Laspeyres (Regensburg: Josef Manz, 1860; repr. Graz: Akademische Druck-u. Verlagsanstalt, 1956), p. 244. On the Baltic expeditions see Eric Christianson, *The Northern Crusades: The Baltic and the Catholic Frontier, 1100–1525* (London: Macmillan, 1980), pp. 48–69, 89–100; as well as the more extended treatments in William Urban, *The Baltic Crusade* (De Kalb, Ill.: Northern Illinois University Press, 1975) and *The Chronicle of Henry of Livonia*, transl. James A. Brundage (Madison: University of Wisconsin Press, 1961).

34. Raymond of Penyafort, *Summa de penitentia* 2.4.1, ed. Xavier Ochoa and A. Diez, *Universa bibliotheca iuris*, Vol. 1 B (Roma: Commentarium pro religiosis, 1976), col. 461–62: "Item dicunt quidam, quod in bello iusto possunt officium hoc exercere etiam contra christianos. . . ."

The question naturally arises as to who were the people who were saying these things. I am aware of only two texts in which the argument that Raymond reports had been advanced unequivocally prior to the time that he wrote.³⁵ The Parisian theologian, Peter the Chanter (d. 1197) declared in his *Summa*:

Jerome states that it is dangerous to practice any craft that promotes pleasure or cruelty, as may be said of ballista specialists. Whence it is said, according to the Bishop of St. George, that communion is not to be given to them, unless they fight against the Saracens or in a just war.³⁶

Likewise Peter the Chanter's former pupil, Cardinal Robert of Courson (ca. 1158/60–1219), commented in his theological lectures that manufacturers and users of the ballista and the crossbow stood in moral peril, unless they employed their deadly tools "for the defense of the holy land against the pagans, or even for defending their own kingdom."³⁷ Thus it appears that sometime during the 1190's, the decade during which Bernard of Pavia wrote his *Summa decretalium* and Peter the Chanter and Robert of Courson were delivering the lectures on which their *Summae* were based, the notion came into currency that the use of the crossbow could be tolerated in just wars between Christian opponents. Who invented this idea I cannot say with certainty; perhaps its begetter was that mysterious Bishop of St. George, mentioned by Peter the Chanter. In any case the Chanter is the earliest exponent of the doctrine known to me, and it seems probable, therefore, that it was created by the Paris theologians during the 1190's.

I should add, however, that Peter the Chanter also expressed his disapproval of the revolutionary new weapons I am discussing. In another passage of his *Summa* he railed against the manufacturers of these horrid instruments of destruction:

Again, there are certain businesses of no usefulness which present many occasions for sin to those who conduct them. They should be expelled from the Church—unless there are a great many of them. Such are the makers of ballis-

35. It seems significant that Joannes Teutonicus in his discussion of just war in the *glossa ordinaria* on the *Decretum* appears to be unaware of this argument, although it is virtually certain that he was familiar with the text of *Artem illam*.

36. Peter the Chanter, *Summa*, quoted by John Baldwin, *Masters, Princes, and Merchants: The Social Views of Peter the Chanter and His Circle*, 2 vols. (Princeton, N.J.: Princeton University Press, 1970), 2:160 n. 128: "Ieronimus: Omnis ars periculose exercetur quam luxuria vel quam crudelitas invenit, ut de balistariis. Unde dicendum secundum episcopum sancti georgii quod non est communio ei danda nisi contra saracenos vel in iusto bello pugnent."

37. Robert of Courson, *Summa* 10.10.12, in Baldwin, *Masters, Princes, and Merchants*, 2:160, n. 127: "Eodem modo dicimus de compositoribus balistarum precipue si balistas faciunt ad impugnandum christianos et ecclesiam dei, sed pro defensione terre sancte contra paganos vel etiam pro regno defendendo tolerari possunt."

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tas and dice. Hence, if anyone possessed all the dice and all the ballistas that exist in the world, he ought to burn them, rather than sell them to Christians for illegal uses. Christians may, however, use ballistas against pagans and Cathars, but not against Christians.³⁸

Despite these moralistic fulminations, however, the harm had been done. Peter the Chanter and his circle had perhaps invented and certainly publicized a loophole in the ban on the dreaded weapons, and it quickly passed from the theologians into the legal literature. Goffredus de Trano (d. 1245) incorporated the distinction in his *Summa super titulis decretalium* (written between 1241 and 1243):

Christians may not practice this craft [of the crossbowman] against Christians. . . . This is true if the war is unjust; but if it is a just war, any type of weapon may be employed. . . . This skill may also be employed against pagans and the persecutors of the Christian faith.³⁹

The same line of argument recurred, with even greater effect, in the ordinary gloss of the *Liber Extra*, redacted in its final form by Bernard of Parma during the 1260's.⁴⁰ Since the ordinary gloss was the standard commentary on the *Decretals* and was routinely taught in the law faculties of medieval universities as the authoritative interpretation of the text, the gloss's adoption of the view that crossbows and ballistas could legitimately be used in just wars, even against Christians, effectively meant that the authoritative expositors of the law interpreted it to mean something quite different from, and in all probability diametrically opposed to, the intention of the legislators who framed this canon at the Second Lateran Council. The adoption of this interpretation by the academic lawyers ensured that the ban on the use of the crossbow would become entirely ineffective, which was precisely what happened.⁴¹ The

38. Peter the Chanter, *Summa*, in Baldwin, *Masters, Princes, and Merchants*, 2:160 n. 125: "Item sunt quedam officia nullius utilitatis et multam occasionem prestant peccandi artifices illorum. Nisi multitudo esset in causa, essent eieiciendi ab ecclesia. Ut sunt balistarii et decarii. Unde si quis haberet omnes decies qui sunt in mundo et omnes ballistas potius deberet comburrere quam vendere christianis ad usum illicitum. Possunt tamen christiani uti balistis contra paganos et cataros sed non contra christianos."

39. Goffredus de Trano, *Summa super titulis decretalium* to X 5.15.1 (Lyon: Roman Morin, 1519; repr. Aalen: Scientia Verlag, 1968), p. 430: "Christiani aduersus christianos non possunt hoc officium exercere, ut infra eodem c. uno [X 5.15.1]. Quod uerum est si bellum fuerit iniustum; nam si iustum, quelibet genere armorum est utendum. . . . Sed contra paganos et persecutores fidei christiane potest hoc officium exerceri."

40. Bernardus Parmensis, *Glossa ordinaria* to X 5.15.1 v. *christianos*: "Secus de Sarracenis a contrario sensu, et intellige debet de bello iniusto, arg. supra de iureiu., sicut si consisteret [X 2.24.29], quoniam si iustum esset, licitum esset pugnare, 23 q. 3 dominus [C. 23 q. 2 c. 2] et q. ultim. ut pridem [C. 23 q. 8 c. 17]." Likewise in the *Casus longi* to X 5.15.1: "Nota quod contra catholicos pugnare non licet, et intelige de bello iniusto, secus de iusto." Both the *glos. ord.* and the *Casus* are cited from the *Corpus iuris canonici una cum glossis*, 4 vols. (Venezia: Apud Iuntas, 1605).

41. Fournier, "Prohibition," pp. 477-479.

history of this effort to prohibit the use of the crossbow in domestic wars within Christendom is not a particularly comforting precedent, I fear, for those who hope to discourage the use of newer and vastly more destructive weapons in our own day.⁴²

I shall now return to a theme that I touched on earlier, and one whose historical outcome may be slightly less depressing. In discussing the treatment of just and unjust wars in Gratian's *Decretum* and by the canons *Treugas autem* and *Innovamus* of the *Liber Extra*, I stated earlier that the net effort of these doctrines was that only just wars had legal consequences for property rights. The civilians and canonists in the law faculties did not subject this notion to detailed analysis until the mid-13th century and after. When they did so, their analyses led to some interesting, even suggestive, conclusions. Pope Innocent IV (1243–54), who was a law professor before he became Pope and who continued his scholarly writing during his tenure of St. Peter's Chair, maintained that soldiers summoned to fight in a just war had a right to claim compensation from their leader for any losses that they suffered in consequence of their military service. He based this contention on the intriguing theory that a summons to military service (save under certain exceptional circumstances) created a contract (a *mandatum*) between the summoner and those who responded gratuitously to his summons. By virtue of this contractual relationship, the summoner assumed an obligation to make good expenses and losses incurred by those who served him. If the leader failed to pay them voluntarily, Innocent continued, individual soldiers had recourse against him by an action in mandate. This recourse, however, applied only to those summoned to a just war; in an unjust conflict soldiers had no contract with their leader and hence had no right to sue to recover expenses and losses.⁴³ The effect of Innocent's doctrine was to shift liability for the expenses of conducting warfare to the person who proclaimed a just war, while in an unjust conflict the soldiers had to bear individually any expenses or losses they might incur and the initiator of the hostilities was freed from liability to his followers. This scheme created an economic disincentive for monarchs and other rulers to undertake just wars and for individual soldiers to fight in unjust ones.⁴⁴

42. Another unsuccessful effort to limit violence was the attempt by the I Council of Lyon (1245) c. 18 to prohibit political assassination. The canon was incorporated in VI 5.4.1, but seems to have had little effect.

43. Innocent IV, *Apparatus toto orbe celebrandus super V libris decretalium* to X 2.24.9, no. 1 (Frankfurt a/M: Sigismund Feyerabendt, 1570; repr. Frankfurt a/M: Minerva, 1968), fol. 288r.

44. Innocent's argument was adopted by other canonists as well; see Joannes Andree, *In quinque decretalium libros novella commentaria* to X 2.24.29 no. 5, 5 vols. in 4 (Venezia: Apud Franciscum Franciscum, 1581; repr. Torino: Bottega d'Erasmus, 1963), 2:197va.

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The companion piece to this plan for discouraging war by economic disincentives was the treatment of liabilities resulting from hostile action. The clearest detailed treatments of this problem in the canonistic commentaries occur in the writings of Cardinal Hostiensis (d. 1271) and Joannes Andreae (d. 1348). Hostiensis based his exposition of this problem primarily on Roman law. The key concept, as he saw things, was the formal state of just war, which he called Roman war.⁴⁵ The ruler who waged war without a just and reasonable cause—as do most rulers nowadays, Hostiensis added—exposed himself to liability for any damages resulting from the actions of his troops during the hostilities. The courts should entertain individual actions against such rulers to recover the value of property lost, stolen, or destroyed as a result of the conflict. Joannes Andreae added that no such actions ought to be entertained against a ruler who was defending his domains against an aggressor, so long as the defender limited his actions to those required for strictly defensive purposes.⁴⁶ No restitution was required, either, for property damage resulting from a formally proclaimed just war.⁴⁷

Joannes Andreae added a further qualification: The ruler who commences a conflict does so under a *prima facie* presumption that the conflict is unjust; the burden of rebutting that presumption rests on him. Further, Joannes added, jurisdiction over claims for compensation arising out of an unjust conflict and determination of the status of a conflict as just or unjust was vested by civil law in the courts of the Church, not in the royal courts or the courts of other secular authorities.⁴⁸

In addition, Hostiensis and other canonistic writers maintained that there was a right to initiate criminal actions against those responsible for the deaths of persons killed in an unjust war. This conclusion rested on a consensus among the canonists that deaths in a just war, while regrettable, were not caused by wrongful acts.⁴⁹ There was respectable theological opinion, grounded in ideas that originated with St. Augustine, that sacred violence, which included waging just war against certain classes of enemies—notably pagans, other non-Christians, and

45. Hostiensis, *Summa aurea, una cum summariis et adnotationibus Nicolai Superantii*, lib. 1, tit. De treuga et pace, no. 4 (Lyon: Joannes de Lambray, 1537; Aalen: Scientia Verlag, 1962), fol. 59ra.

46. Joannes Andreae, *Novella* to X 4.24.29, no. 4, ed. cit., fol. 197va.

47. Hostiensis, *In quinque decretalium libris commentaria* to VI 5.4.1, 6 vols. in 2 (Venezia: Apud Iuntas, 1581; repr. Torino: Bottega d'Erasmus, 1965), 6:29va.

48. Joannes Andreae, *Novella* to X 2.24.29, no. 3 and X 5.12.24, no. 2, ed. cit., 2:197va and 5:65rb.

49. E.g. in the *Quaestiones Bambergensis I*, ed. Alfons M. Stickler, in "De potestate gladii materialis ecclesiae secundum 'Quaestiones Bambergenses' ineditae," *Salesianum* 6 (1944), 121–124, and a 12th-century Anglo-Norman gloss to C. 23 q. 5 c. 9 v. *si non licet*, in MS. C.III.1, fol. 213ra, of Durham Cathedral Library: "Tribus modis fit licite homicidium, scilicet cum inspiratur aliquis deo occulte ut aliquem interficiat, uel cum iudex habens potestatem gladii aliquem interficit, uel cum precepto principis miles interficit hostem."

heretics—was an act of love and hence morally virtuous.⁵⁰ Thus Hostiensis could conclude that “A layman who slays anyone in a just war is without fault,” and *e contrario* that those who caused deaths in an unjust war were criminally guilty of homicide.⁵¹

Giovanni da Legnano, the author of the first full-fledged treatise on the law of war, as I mentioned earlier, drew upon these teachings of Innocent IV, Hostiensis, and Joannes Andreae in his work and summarized the conclusions that I have set forth here as his definitive statement of the doctrine of liability and redress for actions perpetrated in war.⁵² In Giovanni’s presentation it became obvious that there was only one type of war, the just war, that made economic sense, either for rulers or for their soldiers. The liabilities incurred by participants could potentially cripple the victor in an unjust conflict. Even if his victims proved ultimately unable to collect all their claims against him, the law, as Giovanni summarized it, provided victims of an unjust conflict with ample opportunity for almost endless legal harassment that might well strip victory of its savor and its profit.

One further class of questions remains to be considered here, namely, property rights accruing to the victors in a conflict. Roman law had forbidden private individuals to acquire property as a result of their participation in a conflict, save for the stipends that they received from the state for their services.⁵³ This prohibition was taken into Gratian’s *Decretum*.⁵⁴ The 12th-century decretists taught it as a regular part of their treatment of the law of war.⁵⁵ In the 13th century, however, there was a change of attitude. The ordinary gloss on the *Liber Extra* asserted that the title to property captured in war depended upon the nature of the war in which it was captured. In an unjust war, the victor lacked legal title to any property he acquired in the conflict, but property acquired in a just war belonged to the victor.⁵⁶ Innocent IV expanded on this idea and declared that both persons and property captured in a just war rightfully belonged to the captor. On the other hand, Innocent continued, those who lost property as a result of actions in an unjust war were entitled to legal redress through an *actio vi bonorum raptorum* for the recovery of movables or an *actio rei vindicatio* for the recovery of im-

50. Jonathan Riley-Smith, “Crusading As an Act of Love,” *History* 65 (1980), 177–192.

51. Hostiensis, *Summa aurea*, lib. 5, tit. De homicidio, no. 2, in ed. cit., fol. 241va.

52. Giovanni da Legnano, *De bello* 42, ed. Holland, pp. 115–116.

53. Dig. 49.16.9 (Marcianus).

54. C. 23 q. 1 c. 5.

55. Paucapalea, *Summa* to C. 23 q. 1 pr., ed. Schulte, p. 99; *Summa Parisiensis* to C. 23 q. 1 c. 5 v. *militare* and v. *sed id agere*, ed. McLaughlin, p. 211; Rufinus, *Summa* to D. 1 c. 10 v. *item modus stipendiorum*, ed. Singer, p. 11.

56. *Glos. ord.* to X 2.24.29 v. *restituatur*.

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movables.⁵⁷ Joannes Andreae developed this notion further. In just wars, he taught, the victor has a right to retain not only property captured from his foe—that is, the ruler against whom he waged the war—but also property captured from the enemy's vassals, subjects, and allies. But this right was subject to three restrictions, according to Joannes. First, it applied only to persons and property captured during the course of hostilities. Second, it applied only to property belonging to those who actually participated in the war. Third, it applied only to property that belonged to persons over whom the victor had legitimate jurisdiction.⁵⁸ Thus property that belonged to persons who lived in the kingdom of the victor in a just war might rightfully be seized by the ruler if the owners cooperated with the enemy during hostilities, provided that the seizure took place while hostilities were still in progress. A king had the right, in other words, to confiscate the property and imprison the persons of those who rebelled against him and who gave aid to his enemies in a just war. A king did not have the right, however, to confiscate the property or to hold the persons of his opponents who lived in the enemy kingdom, although he might hold captured opponents as hostages to guarantee specific performance, say, of provisions in a peace treaty.⁵⁹

Thus the distinctions between just and unjust wars and between private and public hostilities that feature so prominently in medieval jurists' discussions were not simply abstract legal theorizing about the moral merits of specific kinds of conflicts.⁶⁰ The economic consequences of war depended directly upon these juristic categories, and both rulers and soldiers were certainly aware of them.⁶¹ The speculations of the lawyers had considerable practical importance for those who engaged in war and those who declared it. This segment of legal history merits reflection, even in the 20th century, when we ponder the problems of war and peace. If the venerable tradition of just war is to have any current value, save as a rhetorical device for slandering our enemies, it may lie in the suggestion that it might be wise to use incentives and sanctions other than physical force to discourage military adventurism. If we want to make war unattractive as a policy option, perhaps the best strategy for achieving that goal may be to find ways to make it unprofitable as well.

57. Innocent IV, *Apparatus* to X 2.24.29, no. 5, in ed. cit., fol. 288 v.

58. Joannes Andreae, *Novella* to X 2.13.12, no. 20-22, in ed. cit., 2:82ra-rb.

59. Joannes Andreae, *Novella* to X 2.24.29, no. 9, ed. cit., 2:198ra.

60. Keen, *Laws of War*, pp. 70-71.

61. Keen, *Laws of War*, pp. 82-100.

THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and change. It begins with the first people who lived on this land, and continues through the years of exploration, settlement, and the struggle for independence. The story is one of a people who have built a nation of freedom and opportunity, and who have fought to protect those values through the years.

The early years of the United States were marked by a period of rapid growth and expansion. The country was founded on the principles of liberty and justice for all, and these principles have guided the nation through the most difficult of times. The story of the United States is a story of a people who have never been afraid to stand up for their beliefs, and who have always been willing to sacrifice for the good of the nation.

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XII

A Twelfth Century Oxford Disputation Concerning the Privileges of the Knights Hospitallers *

I

PRIVILEGES and exemptions of various kinds granted to religious orders were a perennial source of trouble for the medieval papacy and a significant part of the legal history of the medieval Church is concerned with such privileges. Decretals bestowing favors, litigation attacking them, apologies defending them and attempts to thwart the intention of these grants abound in the legal literature of the period. Among the religious orders of the twelfth century, the Knights Hospitallers, together with the Knights Templars and the Cistercians, were especially well favored recipients of papal grants of privileges. Beginning with the grant of papal protection bestowed on the Hospitalers by Paschal II in 1113,¹ dozens of twelfth century decretals extended the privileges enjoyed by the Knights. They were commissioned to collect alms,² they were exempted from the payment of tithes and other taxes of various descriptions,³ particularly on noval lands and on lands worked directly by them and their servants,⁴ they were granted lucrative rights of burial in their cemeteries,⁵ those who maltreated them were subject to excommunication,⁶ their enemies were forbidden to lay hands on them or their possessions,⁷ their oaths were conceded special evidential

* I should like to express my thanks to Professor Stephan Kuttner, who has kindly read this paper in manuscript and has made a number of helpful suggestions and improvements in the text.

¹ *Regesta Pontificum Romanorum*, ed. P. Jaffé, S. Loewenfeld, F. Kaltenbrunner, and P. Ewald, 2 vols. (Graz, 1956), 6341 [hereafter cited as JL].

² JL 9931, 10872, 11458, 15357.

³ JL 15139, 15140, 15554, 15565, 15626, 15759, 15766, 15757, 15842, 15889, 16244.

⁴ JL 14117, 14526, 15589.

⁵ JL 11106, 13963, 15347, 15351, 15510, 16172.

⁶ JL 13548, 13743, 16868.

⁷ JL 15561.

value in the courts,⁸ their benefactors were granted indulgences,⁹ their members were forbidden to leave the order,¹⁰ and the brethren of the order were declared exempt from excommunication or interdict by any bishop, archdeacon, or other ecclesiastical prelate.¹¹ Further, the Knights saw their privileges and possessions confirmed on numerous occasions during the century.¹² It is true, however, that despite the great number and variety of privileges which they enjoyed, the Knights occasionally had resort to forgery to better their position or to strengthen the claims which they legitimately enjoyed.¹³ Occasionally, too, the Knights had to be reminded to respect the rights of their diocesan ordinaries and to observe some moderation in the assertion of their privileged position.¹⁴

The decretals granting power, possessions, and privileges to the Hospitallers were well known to the canonists of the late twelfth century and many of these papal letters were incorporated in the collections of *Extravagantes* which began to appear at the end of the century.¹⁵ Disputations in which the provisions of these decretals were discussed also occurred upon occasion in the schools of canon law of this period.¹⁶ One such disputation, hitherto unpublished, concerning the Hospitallers' privilege of immunity from excommunication will be reported here.

II

The account of this disputation occurs in MS Royal 9 E. VII of the British Museum, folio 191^r, lines 1-38. The *quaestio* concerning the

⁸ JL 17276.

⁹ JL 15545; N. Paulus, *Geschichte des Ablasses im Mittelalter vom Ursprunge bis zur Mitte des 14 Jahrhunderts*, 3 vols. (Paderborn, 1922-23), I. 204.

¹⁰ JL 13889.

¹¹ JL 13745.

¹² JL 9930, 10897, 11586, 12241, 13960, 13961, 13972, 14511, 15130, 15308, 15455, 15551, 15629, 15856, 15896.

¹³ JL 7451, 16082, 16082a.

¹⁴ JL 13961, 16573.

¹⁵ Thus Bernard of Pavia included fifteen decretals dealing with the Hospitallers in the *Compilatio Prima*: Comp. I (ed. E. Friedberg, in *Quinque compilationes antiquae*, Graz, 1956) 3. 26. 10; 3. 26. 22; 3. 27. 1; 3. 28. 8; 3. 33. 16; 5. 28. 3-8; 5. 33. 7; 5. 34. 13-14; 5. 39. 10. John of Wales included four decretals dealing with the Hospitallers and their affairs in the *Compilatio secunda*: Comp. II. 3. 11. 2; 3. 18. 2; 3. 26. 2; 5. 14. 2. These decretals represent only a little more than 1 % of the material included in these two *compilationes*: the Comp. I includes a total of 912 capitula, of which those concerned with the Hospitallers account for 1.6 %, while the Comp. II includes a total of 330 items, of which the material concerning the Hospitallers represents 1.2 %.

Hospitallers is the first of fifty-seven disputations which are briefly reported on folios 191^r-198^r of this manuscript, which is variously known as the *Quaestiones Londinenses* or the Royal *Quaestiones*. The disputations reported here apparently took place in the Oxford schools, probably during the last decade of the twelfth century, for various events which occurred in the years 1191-96 are discussed in them. Since there is no mention of Pope Innocent III and since none of his decretals are cited in the disputations, it is very probable that the disputations occurred before 1198 or 1199 at the latest. Several Oxford masters are named in the disputations, including Master Nicholas de l'Aigle,¹⁷ Master Simon of Derby,¹⁸ another Master Simon who is probably Simon of Southwell,¹⁹ Master John of Kent,²⁰ a rather shadowy Master Gregory,²¹ and Master John of Tynemouth,²² whose name is attached to the *olutio*

¹⁶ One such disputation is reported by Gérard Fransen, 'Les 'Questiones' des canonistes (II),' *Traditio*, XIII (1957), 484, no. 14.

¹⁷ Nicholas de Aquila (or de l'Aigle) became Dean of Chichester in 1197 and later was elected bishop. S. Kuttner and E. Rathbone, 'Anglo-Norman Canonists of the Twelfth Century,' *Traditio*, VII (1949/51), 320; A. B. Emden, *Biographical Register of the University of Oxford to A. D. 1500*, 3 vols. (Oxford, 1957-59), I, 560.

¹⁸ Simon of Derby appears as a witness to a number of charters relating to the affairs of the bishops and chapters of Lichfield and Lincoln in the late twelfth and early thirteenth centuries. Kuttner and Rathbone, 'Anglo-Norman Canonists,' p. 320; Emden, *Biographical Register*, I, 571-72.

¹⁹ Simon de Siwelle or Southwell became a canon and prebendary of Lincoln Cathedral ca. 1184 and later appears as a member of the court of St. Hugh of Avalon, Bishop of Lincoln, and of Archbishop Hubert Walter of Canterbury. He was a papal judge delegate between 1191 and 1198 and later became a canon and treasurer of the chapter of Lichfield Cathedral. Kuttner and Rathbone, 'Anglo-Norman Canonists,' pp. 317-18, 320, 326; Emden, *Biographical Register*, III, 1704; C. R. Cheney, *English Bishops' Chanceries, 1100-1250* (Manchester, 1950), pp. 11, 13, 158.

²⁰ John was rector of Appledore in Kent, a member of Archbishop Hubert Walter's household, a royal justice, and possibly the author of two lost treatises, one a *Summa de poenitentia*, the other a work on the *Decretum Gratiani*. Kuttner and Rathbone, 'Anglo-Norman Canonists,' p. 320; Emden, *Biographical Register*, II, 1037; S. Kuttner, 'Pierre de Roissy and Robert of Flamborough,' *Traditio*, II (1944), 494, n. 9.

²¹ Kuttner and Rathbone, 'Anglo-Norman Canonists,' p. 320, tentatively identify him either with Master Gregory of London, author of the *Mirabilia Romae*, or possibly with the otherwise unknown *Gre.* who is cited in the *Summa Quamvis leges seculares*; cf. Emden, *Biographical Register*, II, 817.

²² John of Tynemouth lectured at Oxford at the end of the twelfth century, when Thomas Marleberge, later to become Abbot of Evesham, was one of his students. John later became a canon and prebendary of Lincoln Cathedral ca. 1206 and was archdeacon of Oxford between 1215 and 1221. He was also at one time a clerk of Archbishop Hubert Walter's household and served as a papal judge delegate ca. 1210. He is thought to have died ca. 1221. Kuttner and Rathbone, 'Anglo-Norman Canonists,' pp. 317-27; Emden, *Biographical Register*, III, 1923; Cheney, *English Bishops' Chanceries*, pp. 11-14, 20, 129, 158.

to the question involving the Hospitallers and to one other question in the manuscript.²³

The manuscript of the Royal *Quaestiones* is written in a late twelfth or early thirteenth century hand. The folios measure approximately 32 cm. by 22 cm. and are ruled in double columns whose dimensions average roughly 9.5 cm. by 27.5 cm. The columns are set approximately 1 cm. apart and are variously ruled, with from 61 to 83 lines each. The eight folios of the manuscript may have been written by a single hand, although the variations which occur in the use of Roman and Arabic numerals and the wide variations in the forms of abbreviations might seem to suggest that several individuals were responsible for copying this manuscript. The *reportationes* give the impression of having been taken down as notes from oral disputations: such errors as 'Solempnus' for 'Solemus,' 'possit' for 'post,' 'nimirum' for 'nimium,' 'benignus' for 'benignius,' 'puppblicatum' for 'publicatum,' 'fidem' for 'fundum,' 'epic-tione' for 'evictione,' 'mutas' for 'mutus,' 'procelare' for 'procellere,' and 'condicionis' for 'condiciones' would seem to support this conclusion. The text has been corrected and revised in a contemporary hand and there are frequent elisions and deletions in the manuscript which indicate that a serious attempt was made to produce a reliable text. The manuscript is listed in the British Museum's Catalogue of this collection as "Cases in Canon Law." Of its provenance little is known, save that the manuscript belonged at one time to the Benedictine abbey of St. Augustine at Canterbury. Several of the masters whose disputations are reported in this manuscript are also referred to in the glosses of another late twelfth-century manuscript, MS 676 (283) of Gonville and Caius College, Cambridge.²⁴

III

The case in point here is the first of the *Quaestiones* in the Royal manuscript. The issues discussed in this disputation involve the interpretation of a privilege which was granted to the Knights Hospitallers by Pope Alexander III (1159-81). The text of the privilege is preserved in an undated decretal which was included in the *Compilatio*

²³ *Quaestio* 35: fol. 195^{ra}, line 28 to fol. 195^{rb}, line 11.

²⁴ Kuttner and Rathbone, 'Anglo-Norman Canonists,' pp. 317-27; S. Kuttner, *Repertorium der Kanonistik, I: Prodromus corporis glossarum* Studi e Testi, vol. 71 (Citta del Vaticano, 1937), pp. 251-52; W. Ullmann, *Medieval Papalism* (London, 1949), pp. 200-1; Sir George F. Warner and Julius P. Gilson, *Catalogue of Western Manuscripts in the Old Royal and King's Collections*, 4 vols. (London, 1921), I, 295.

Prima, compiled by Bernard of Pavia about 1191. The text of the decretal, which is directed to the "Bishops, Archdeacons, and other prelates of the churches established throughout Gaul," reads:

Sane quoniam a predecessoribus nostris et a nobis statutum est, ut ipsos excommunicare uel oratoria sua interdicere nemini liceat, uobis presentium auctoritate iniungimus, atque precipimus, ut predictos fratres hospitalis Ierosolimitani aut ecclesias suas interdicere uel excommunicare nullatenus presumatis.²⁵

The *quaestio*, then, postulates this set of facts: an armed band of Hospitallers have forced their way into a church, where they attacked and beat the clergy attached to the church and expelled them from the sacred precincts. The local bishop, in retaliation, has denounced the guilty Hospitallers as excommunicates and they, in turn, have laid a complaint against the bishop for violating their privilege of immunity from excommunication.

The argument upholding the Hospitallers' complaint is based on the premise that since the power to excommunicate the Hospitallers is, according to their privilege, implicitly reserved to the pope, so also the power to denounce them as excommunicates must likewise be reserved implicitly to the pope, since the denunciation carries with it the stigma and some of the effects of excommunication itself. Thus, it is argued, the Hospitallers' privilege would be of no use to them if it were possible for bishops to denounce them as excommunicate. Since it was for the purpose of safeguarding the Knights from the effects of excommunication that the pope granted them this privilege in the first place, the argument concludes that the bishop's action must be invalid because it is an attempt to defeat the purpose which the legislator had in mind when he awarded the Knights this privilege.

The opposing argument postulates a distinction between the act of laying a person under excommunication and the act of denouncing a person as excommunicate. It is argued that it is permissible for a person

²⁵ *Comp. I*, 5. 28. 8 (X—) = JL 13745. For the date of *Comp. I*, see W. Plöchl, *Geschichte des Kirchenrechts*, 3 vols (Munich, 1953-58), II, 416-17; H. E. Feine *Kirchliche Rechtsgeschichte I: Die Katholische Kirche* (Weimar, 1955), p. 252; S. Kuttner, *Repertorium der Kanonistik (1140-1234): Prodomus corporis glossarum*, I (Città del Vaticano, 1937), p. 322; A. M. Stickler, *Historia iuris canonici Latini, I: Historia Fontium* (Torino, 1950), p. 226. A. Vetulani has recently questioned the commonly accepted date and has suggested that 1187 is more likely; see his article, 'Deux intéressants manuscrits de la 'Compilatio Prima'', *Traditio*, XII (1956), 605-11. The early history of *Comp. I* has also been recently discussed by G. Fransen, 'Les diverses formes de la 'Compilatio prima'', *Scrinium Lovaniense* (Louvain, 1961), pp. 235-53 (brief summary in *Traditio*, XVII (1961), 547).

to make known a fact even though the person who makes the fact known has not the power to cause the fact to exist. Thus the bishop may denounce the guilty Knights as excommunicates, even though he lacks the power to place them under excommunication. It is further argued that, had the pope so desired, he could have forbidden bishops either to excommunicate Hospitallers, or to denounce them as excommunicate, or both. But since the privilege which was in fact given to them only forbids bishops to excommunicate members of the order, it is contended that hence the pope implicitly recognized the bishop's right to denounce the Hospitallers as excommunicate.

The Oxford master who disputed this case was evidently no partisan of the Hospitallers' privileged position: John of Tynemouth's *solutio* states his conclusion baldly: "Bene potuit eos denunciare."

Quaestiones Londinenses

London. British Museum. Royal 9 E. VII, fol. 191^r-198^v

Quaestio, I

folio 191^{ra} lines 1-38

TEXT

Hospitalariis indulgit papa¹ huiusmodi priuilegium vt nullus archiepiscopus² possit eos excommunicare.³ Quidam hospitalarii armata manu irruente in quamdam ecclesiam clericos eius verberatos eiecerunt. Episcopus loci denunciat eos excommunicatos. Conqueruntur de episcopo quia in priuilegium eorum deliquerat. Quod non possit episcopus excommunicatos denunciare, sic: Solus papa potest episcopum pro crimine deponere vel <iudicare et> [MS indicare], vt 3. Q. 6. Quamuis.⁴ Solus etiam episcopum absolutum et purgatum potest denunciare, adeo quod si a papa <absolutus> [MS absolutum] ad propria redierit sine litteris pape absolutariis [*sic* !] non habebitur pro absoluto et purgato, vt 8. Q. vltima, c. vltimo.⁵ Cum ergo, vbi papa sibi reseruat specialiter alicuius absolutionem, idem reseruat sibi absolutionis denunciationem, ergo et vbi reseruat sibi excommunicationem et excommunicationis denunciationem<m>. Contrariorum] enim eadem est ratio, vt D. xxi, Inferior, Denique.⁶ Item eque punitur qui carmen famosum componit et qui inuentum publicat, vt V. q. i. c. j. et vltimo.⁷ Ergo eque puniendus est qui

¹ Alexander III (1159-81).

² Apparently this represents a misreading of the salutation of the decretal, which bears the address: "Episcopis, Archidiaconis et aliis ecclesiarum prelati per Galliam constituti."

³ *Comp. I* 5. 28. 8. *Sane quoniam* (X—).

⁴ C. 6. q. 4. c. 6. *Quod bene*.

⁵ C. 8. q. 5. c. un. *Quilibet fratrum*.

⁶ D. 21. c. 4. *Inferior sedes*, and c. 6. *Denique si*.

⁷ C. 5. q. 1. c. 1. *Qui in alterius*, and c. 3. *Si qui inuenti*.

perperam denunciatur et perperam excommunicatur. Item si cui conceditur excommunicare, eidem conceditur et excommunicationem denunciare: arg. ff de <seruitutibus> [MS: furti] rusticorum prediorum;⁸ item <sic> possunt § habet; 1. 3 de iudiciis, § Quamvis, § Sententiam.⁹ Ergo interdicto hoc <interdicitur> [MS: intenditur] id: arg. 4. q. 3, Sane quod super.¹⁰ Item C. de rebus alienis non alienandis, Sancimus, in fine.¹¹ Quia sepe prohibetur aliquid propter consequens ex eo, vt 22. q. j. In nouo;¹² D. 37, Ideo.¹³ Ita et hic papa prohibet hos excommunicare propter id quod ex eo sequitur, scil. communic<a>tionem eorum vitari. Item antecedentis expositione. Quid enim aliud [corr. ex aliquid] est excommunicare quam excommunicationem ponere, anathematizare quam separare, vt 24. q. 3 [MS: 2. (2 corr. ex 3) 4. 2], Certum est.¹⁴ Set tunc potissimum a communione separatur quis quando denunciatur, vt <24> [MS: 2. 4] Q. 2, Sane quod super.¹⁵ Item attendenda est mens priuilegium concedentis, 16. q. j, Generaliter, in fine; ¹⁶ ff de <constitutionibus> [MS: legibus], Beneficium.¹⁷ Item si licet episcopo eos denunciare, infructuosum foret eis priuilegium. Sicut enim antequam indubium erat priuilegium poterat episcopus eos excommunicare de facto passim pro libito suo et teneret sententia, <ita> [MS: itera] et nunc potest eos passim excommunicato denunciare dicendo, licet falso, eos incidisse in canonem et ob hoc se eos excommunicatos denunciare. Constat autem quod huiusmodi dolos voluit dominus papa inhibere, ut <...> § Affirmo quod nihil <ominus> [MS: nomius] non licuit episcopis nec alio modo eis liceret, arg. <14.> [MS: ix] q. 3, Plerique;¹⁸ ff de questionibus, l. j. § Cum quidam;¹⁹ ff pro socio, Idemque erit;²⁰ C. de liberis naturalibus, Legem Anastasii, in finem.²¹

Contra. Infirmum est argumentum et, si consequens concessio hoc conceditur id, ergo interdictio hoc interdicitur id. Nam cui conceditur maius et minus non cum cui tollitur maius et minus, vt x. q. vltima, c. j,²² et pleniter. Secus est in admonendo quam in concedendo, vt ff de alimentis legatis, Legatis;²³ ff de transactionibus,

⁸ Dig. 8. 3. 3. 3.

⁹ Possibly *Comp. I.* 1. 21. 7, 8. *Quamvis simus*, (= X 1. 29. 6) et infra: *Sententiam* (X—) = JL 14156. Professor Kuttner reminds me that the reference to "liber 3" shows that the *Coll. Tanner* (Bodleian MS Tanner 8) is being used here. The reference is to *Coll. Tanner* 3. 3. 10, 12 (= liber IV in Professor Holtzmann's analysis of the MS; cf. Kuttner and Rathbone, 'Anglo-Norman canonists,' p. 340, no. 5).

¹⁰ Probably C. 24. q. 2. c. 3. *Sane quod super*.

¹¹ *Cod.* 4. 51. 7.

¹² C. 22. q. 1. c. 3. *In nouo testamento*.

¹³ D. 37. c. 15. *Ideo prohibetur*.

¹⁴ C. 24. q. 3. c. 9. *Certum est*.

¹⁵ C. 24. q. 2. c. 3. *Sane quod super*.

¹⁶ C. 16. q. 1. c. 40. *Generaliter*.

¹⁷ Dig. 1. 4. 3.

¹⁸ C. 14. q. 3. c. 3. *Plerique refugientes*.

¹⁹ Dig. 48. 18. 1. 18.

²⁰ Dig. 17. 2. 16. pr.

²¹ *Cod.* 5. 27. 7.

²² C. 10. q. 3. c. 1. *Placuit ut nullus*.

²³ Dig. 34. 1. 6.

Cum hij, § Qui transigit.²⁴ Item duo prorsus diuersa et a se inuicem discreta sunt excommunicare <et> denunciare; arg. ff de acquirendo, Ad ea, § Cum quis.²⁵ Ergo licet altero concessio concedatur et reliquum non immo si tollatur alterum et regulam vt in Inst. de [repeated and deleted in ms. : de] legatis, § Si quis ancillas²⁶ Item licet cui factum ostendere cui non licet id facere, vt ff de furtis, Si quis in seruitute;²⁷ ff quod vi aut clam, Prohibere.²⁸ Item excommunicatum a suo episcopo potest aliquis alius episcopus denunciare excommunicatum: xi, q. iii, Cure.²⁹ Item potest quis excommunicatum denunciare qui non potest eum excommunicare vt xix, Anastasius;³⁰ arg. igitur c. vltima de penitentia;³¹ ff j. § Hoc titulo.³² Item priuilegium non se extendit nisi quatenus in dubium est, vt 6, q. j, Visis, in fine;³³ 9, q. 3, Idem questus.³⁴ Item iure communi licet episcopus excommunicare omnes parochianos suos. In adeptione huius potestatis non contra est expressio in priuilegio. Alioquin id solum videtur adeptum de quo est expressum; ff de iudiciis, <Solemus> [MS: Solempnus];³⁵ ff de procuratoribus, l. Mutus, § Cum queritur;³⁶ lib. j, de iudicis potestate, Pervenit.³⁷ Item cum duo licuerit pontifici excommunicare et denunciare alterum prohibendo rem videtur papa indulsisse; arg. ff de iudiciis, Cum pretor;³⁸ D. xxv, Qualis.³⁹

Solutio <Johannis de Tynemuth> [MS: Jo. de thi]:⁴⁰ Bene potuit eos denunciare.

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²⁴ Dig. 2. 15. 8. 12.

²⁵ Dig. 41. 1. 7. 7.

²⁶ Inst. 2. 20. 17.

²⁷ Dig. 47. 2. 7. pr.

²⁸ Dig. 43. 24. 3.

²⁹ C. 11. q. 3. c. 20. *Curae sit omnibus*.

³⁰ D. 19. c. 9. *Anastasius*.

³¹ D. 7. de pen. c. 6. *Nullus exspectet*.

³² Not identified.

³³ C. 16. q. 2. c. 1. *Visis*.

³⁴ Perhaps C. 9. q. 3. c. 8. *Conquestus*.

³⁵ Dig. 5. 1. 61.

³⁶ Dig. 3. 3. 43. 1.

³⁷ *Comp. I.* 1. 21. 13. *Pervenit ad nos* (X—).

³⁸ Dig. 5. 1. 12.

³⁹ D. 25. c. 4. *Qualis*.

⁴⁰ For John of Tynemouth (Jo. de thi.) see above, p. O, n. 22.

XIII

A TRANSFORMED ANGEL (X 3.31.18): THE PROBLEM OF THE CRUSADING MONK

STABILITY IS A CORNERSTONE of the monastic life. No monastic virtue was more strongly commended by St Benedict than was stability, no vice more forcibly condemned than willful wandering by a monk.¹ The monk's permanent residence in his cloister was of the essence of his profession. Exhortations to monks that they remain in their cloisters are a commonplace of monastic writers and ecclesiastical legislators. The monk out of his monastery is like a fish out of water, according to one often cited authority.

Although it was obviously necessary or desirable for monks on some occasions to absent themselves from their cloisters, this was a situation which those who governed monastic communities sought to control most strictly. The crusade, however, was one enterprise which drew twelfth and thirteenth-century monks quite regularly out of their monasteries and involved them in occupations which were startlingly incongruous with the monastic ideal.² This

1. St Benedict, *Regula monachorum*, c. 1, 51, ed. P. Schmitz (Maredsous, 1955) pp. 38, 113. Even earlier, in 451, the Council of Chalcedon, can. 14, had made it clear that monks were expected to remain in their communities and that they were not to travel about on either secular or ecclesiastical business.

2. Monks were noticed by contemporaries as participating in all of the significant crusading expeditions from the first one in 1095 onward. Normally their participation seems to have consisted mainly in acting as spiritual counsellors and in praying for the success of the crusading armies—*la stratégie spirituelle*, as Paul Rousset called it. The extent of monks' participation in the

paper will examine the regulations and guidelines which, at least in theory, governed the participation of monks in crusade expeditions.

The participation of monks in the crusade was a natural outgrowth of their participation in pilgrimages, which they often joined and sometimes led, as is well known.³ Although the crusade was counted as a species of pilgrimage, there was concern at the highest levels of the medieval Church about the abuses which might arise from the participation of monks in them. St Anselm, for one, testified to this concern in a letter to some monastic colleagues:

I hear, dearest friends, that you wish to go to Jerusalem. Let me tell you, first of all, that this wish of yours has no good origin. It is contrary to your profession, for you have promised before God to remain fixed in the monastery in which you took the monastic habit. And it is contrary to the obedience owed to the Apostle, who, with his great authority, ordered monks not to take on this journey, save for some religious person who might be useful in governing the Church of God and instructing the people. And even such a person should not go save at the advice of and under obedience to a prelate. I was present when the Apostle declared this policy.⁴

St Anselm's admonition reflected the policy, in fact, of the father of the crusades, Pope Urban II, who clearly sought to restrict the

crusades, however, has never been studied, although it would seem to merit some attention.

3. The development of the pilgrimage tradition and its connection with the crusade is briefly reviewed in my *Medieval Canon Law and the Crusader* (Madison, 1969) pp. 3-18. On the participation of monks in pilgrimages see especially Dom Jean Leclercq, "Mönchtum und Peregrinatio im Frühmittelalter," *Römische Quartalschrift*, 55 (1960) pp. 212-25.

4. St Anselm, *Epist.* 130 in PL 159:165. A generation later, Peter the Venerable was likewise concerned about the participation of monks in the crusade and in other pilgrimages, a theme which recurs in several of his letters. See *Epist.* 51, 80, 83, 144, in *The Letters of Peter the Venerable*, ed. Giles Constable, 2 vols. (Cambridge, Mass., 1967), vol. 1, pp. 151-52, 214-17, 220-21, 353-60.

participation of monks and clerics in the first crusade by requiring that they receive the prior consent of their abbots and bishops before enlisting in the crusading expeditions.⁵

The attitude which St Anselm described remained the normative one up to the time of Pope Innocent III, when a sharp change in papal policy took place. Writing to the bishops of the Western Church in 1213, Innocent radically liberalized the existing law governing the crusade vow. No longer was the prior permission of an ecclesiastical authority to be required when taking the vow to go on crusade. According to the new ruling, anyone at all might, if he chose, commit himself morally and legally to participate in the crusade. Having done so, he might then be relieved of his obligation by the pope or his delegate, should it seem advisable that he not participate personally in the action of the crusade.⁶ This change in papal policy altered the recruitment and organization of crusade armies in many basic respects.⁷ It also altered the juridical situation of the crusading monk.

In the first place, the new regulations made basic revisions in the twelfth-century law of the Church, the intent of which had been clear: a monk had no right to make any vow, including a pilgrimage or crusade vow, without his abbot's consent. This had been the position stated by Gratian (himself a monk) and by the authorities on whom he relied.⁸ The commentators on the *Decretum* generally accepted Gratian's position, but some of them considered that there should be a distinction between the right to make a vow and the right to fulfill a vow once it had been made. The former, they thought, was a right which a monk enjoyed, but it was his abbot's

5. Pope Urban's policy is described by Robertus Monachus, *Historia Iherosolimitana* 1.2 (*Recueil des historiens des croisades, Historiens occidentaux*, vol. 3, pp. 729-30), and also in Urban's letter of 19 September 1096 to the people of Bologna, in H. Hagenmayer, *Epistulae et chartae ad historiam primi belli sacri spectantes* (Innsbruck, 1901), pp. 137-38.

6. Innocent III, *Registrum* 16.28 (PL 116 :819-20); Potthast, no. 4,725.

7. The general legal effects of this change are discussed at length in *Medieval Canon Law and the Crusader*, pp. 69-114, as well as by Palmer A. Throop, *Criticism of the Crusade* (Amsterdam, 1940), pp. 83-94.

8. *Decretum Gratiani* C. 20 q. 4 c. 2 and d. p. c. 3.

prerogative to decide whether the vow ought to be discharged or not. If the abbot should decide that the vow ought not to be discharged, the monk was absolved from the obligation created by his vow.⁹ This was initially the position of Innocent III, as he stated it in a decretal letter issued early in 1198, just a week after his coronation.¹⁰ It is this refinement of votive doctrine, originating in the legal faculty at Bologna (where Innocent himself had been trained), which formed the basis of Innocent's policy concerning the crusade vow.

Crusade vows were very much on Innocent's mind during the opening years of his pontificate. This can be seen from the series of his decretal letters on this matter which was incorporated in the great decretal collection of Gregory IX, where more than half of the decretals dealing with vows bear the inscription of Innocent III.¹¹ In his early decretals, Innocent regarded the making of crusade vows by clerics (presumably including monks) as something less than desirable,¹² although he did not flatly forbid them and seemed to regard them as licit and valid once made. He clearly thought it preferable that the vows of clerics be redeemed by payments or other forms of aid to the Holy Land, than that the vows be fulfilled.¹³ A few years later, in 1201, he defined his position on this matter more precisely. The guideline to be considered in such

9. Such a construction seems to be implied by the anonymous author of the *Summa Parisiensis* to C. 20 q. 4 c. 2 (ed. T. P. McLaughlin, Toronto, 1952), p. 198. The position is considerably clearer in the *Summa decretalium* of Bernardus Papiensis 3.29.5 (ed. E. A. T. Laspeyres, Regensburg, 1860), p. 114. The *glossa ordinaria* to C. 20 q. 4. c. 2 ad v. *uouerit* held that even vows made before entering the monastery were not to be fulfilled without the abbot's permission, an opinion often cited by later authors as well. The *glossa ordinaria* to the various collections of the *Corpus iuris canonici* is cited throughout this paper from the printed version in the Venice, 1615, edition in 4 vols.

10. *Liber extra* (cited hereafter as X) 3.34.6; Potthast, no. 4.

11. See the table of decretals in my paper, "The Votive Obligations of Crusaders," *Traditio*, 24 (1968) p. 95.

12. X 3.34.7 (15 March 1198): "Ipsum etiam uotum, quod ex sui forma sanctum et honestum erat, ex persona uouentis minus licitum uidebatur."

13. Thus in 1198 he wrote, in a section of the decretal cited above but not included in the excerpts chosen for the *Liber extra*: "Minus etiam uotum illud terre orientali uidetur expediens, que plus pugnatorum subsidium quam

matters, he now wrote, was the usefulness of the particular person in the recovery of the Holy Land. Rather than ruling out the licitness of the vows of a whole class of persons, the pope now preferred to treat each case individually. Clerics—including monks—might be authorized to go to the Holy Land if it was clear that they would be useful to the crusading army as preachers or counsellors or if they were rich and would bring numerous warriors in their train. Otherwise, they should not go, even if they had vowed to do so. Rather, they should redeem their promises by making a donation in aid of the Holy Land; unless, of course, the journey had been imposed upon them as a penance for their sins.¹⁴ At this point, Innocent was not so much concerned with the fact that monks were making crusade vows as he was with the criteria for determining whether they should fulfill vows of this kind. By 1213, as was said before, the shift in Innocent's policy was complete. The right to make the vow was conceded; but its fulfillment was restricted by reasonably precise rules and guidelines.¹⁵

By the end of Innocent III's pontificate it appears that papal policy concerning this subject was clear. It is therefore rather startling to find that the canonical writers of the thirteenth century took so little notice of the changes which Innocent III had made.

clericorum, quos et officium et dissuetudo reddit imbelles, ministerium articuli necessitate requirit, quamvis orationibus tuis et aliorum terra illa uehementer indigeat. . . . Credebatur etiam quod terre orientali magis accederet, quod si in tuis et tuorum clericorum procuratoribus fueras impensurus secundum alicuius religiosi arbitrium transferretur in subsidium bellatorum."

14. X 3.34.9 (Sept. 1201): "De clericis uero duximus respondendum quod cum clericatus officium eos reddat inhabiles ad pugnandum, nisi uel consilio strenui uel officio predicationis instructi aut magnatum sint obsequio deputati aut usque adeo diuites fuerint et potentes ut in expensis suis aliquos secum ducere ualeant bellatores, magis ab eis expedit redemptionem accipere quam ad uotum illos cogere proseguendum, si necessitas exigit uel utilitas persuadet. Hec autem de uouentibus dicimus, non de his quibus labor peregrinationis in penitentia est iniunctus."

15. Set forth especially in X 3.34.7. The glossator, with justice, notes that the position is distinctly odd: "Nota hic ab initio unum mirabile, quod ius commune est ut dispensetur in uoto terre sancte et tamen eius executio nulli permittitur, nisi cum papa specialiter committat."—*glos. ord.* to X 3.34.9 ad v. *secundum*.

Time and time again they hark back to the older, pre-Innocentian position. "There are some persons," wrote St Raymond of Peñafort, "who do not have a free power to make vows, so that a monk cannot make a vow of fasting or pilgrimage or anything else; and if he does so he may not carry it out without the permission of his abbot, lest the brethren be scandalized that one person should wish to go beyond the common norm."¹⁶ Similar denials of the monk's right to make the crusade vow, much less fulfill it, were uttered by other decretalists.¹⁷ Hostiensis, in many ways the greatest of them all, was clearly suspicious of the monk who felt inspired to make a pilgrimage vow: "It is to be feared," he wrote of such a monk, "that the spirit of Satan may have taken on the appearance of an angel."¹⁸ Hostiensis was equally clear in his belief that monks were completely inhibited from making vows, save with the permission of their religious superiors.¹⁹

What is so remarkable in all of this is that the decretalists could so unanimously have hardened their faces against the monk's right to make a vow when, in the opening words of one of the decretals in the very same title of the *Liber Extra* on which they were commenting, there was an explicit assertion that everyone, without exception, was free to make a vow.²⁰

16. *Summa de casibus* 1.8.4 (ed. Verona, 1744), pp. 59-60.

17. E.g. Goffredus de Trani, *Summa super titulis decretalium* to X. 3.34 (ed. Lyons, 1519), fol. 153vb-ra and particularly Innocent IV, *Apparatus* to X. 3.34.4 (ed. Frankfurt, 1570), fol. 429ra-rb: "Item irritatur uotum potestate inferioris, nam monachus uotum facere uel complere non potest sine licentia superioris, siue sit abstinentie, siue peregrinationis, siue quodlibet tale unde posset prebere uiam uagandi, uel scandalizandi fratres, uel minuendo obsequium debitum, 20 q. 4 monacho; imo etiam si ante ingressum monasterii uouisset non tenetur soluere, arg. c. scripture, 23 q. 5 noluit; si autem uoueret dicere unum psalmum, uel aliquam orationem, ubi nihil mali potest contingere, seruet uotum, est enim sibi licitum plus mereri." The last statement is eloquent in its implications for Innocent IV's view of the monastic vocation.

18. *Summa aurea*, Lib. 3 tit. De uoto et uoti redemptione (ed. Lyons, 1537) fol. 177ra.

19. *Idem*: "Monachus equidem non potest uotum facere per quod ipsum sine licentia abbatis claustrum exire oporteat."

20. X 3.34.6: "Licet uniuersis liberum sit arbitrium in uouendo, usque adeo tamen solutio necessaria est post uotum. . . ." Further, in X 3.34.11,

Canonical opinion on this matter had come round the full circle when Joannes Monachus (d. 1313) set forth a gloss on the question of whether monks ought to be allowed to make the pilgrimage to Rome in order to receive the Holy Year indulgence. Although Joannes included in his discussion a number of arguments to show that participation in a pilgrimage was perfectly compatible with the religious life, he finally concluded that a monk had no right to go on any pilgrimage, however pious and pacific, unless his abbot felt that it was likely to be spiritually profitable and, accordingly, granted permission for the journey.²¹

Two observations are in order at this point. First, it may be instructive to compare the development of the canon law governing the crusade vows of monks with the law governing the crusade vows of married men.²² The situation of these two groups was more closely parallel than might at first glance appear. Both were groups of persons whose decision to go on crusade had a direct bearing on their relationship—moral, spiritual, and legal—with another person, whether real (as in the case of a husband and his wife) or moral (as in the case of a monk with his superior and community). The relationship in both cases grew out of a promise. In both cases the common teaching of the canonists up to the time of Innocent III was that an individual of either category could not make a vow without the consent of the other person involved. In both cases Innocent III sought to change the previously existing rules so as to make it easier for anyone who so desired to make the crusade vow. The change with regard to married men was more precisely spelled out and more radical in its effects than it was with regard to monks; for, in September 1201, in the decretal, *Ex*

Honorius III, writing in 1216, made it quite clear that the prior of a religious house required no special permission to make a crusade vow and that he might participate personally in a crusade expedition so long as he was certain that his church would not be endangered by his absence.

21. Gloss to *Extrav. comm.* 5.9.1 ad v. *confitebuntur*. This view prevailed and continues to be reflected in the current discipline of the Church; see *Codex iuris canonici*, can. 606.

22. On the crusade vows of married persons see my paper "The Crusader's Wife: A Canonistic Quandary," *Studia Gratiana*, 12 (1967) pp. 425-42.

multa, Innocent specifically provided that husbands might make the crusade vow and fulfill it without the consent of their wives.²³

No such special privilege was granted to monks who wished to go on crusade without the consent of their abbots, although monks were surely included among those who were affected by Innocent's more general instructions about the making of the crusade vow, as has been argued above. The difference between the treatment of married men and the treatment of monks on this matter seems to reflect Innocent's *Realpolitik* regarding the crusade. The knights who might be expected to furnish effective military service on the crusade were likely to be married. Hence special and explicit provisions to encourage their service on the crusade were in order, even if this broke with a well established legal and moral tradition of the Church. The need for the services of monks on the crusade was far less immediate and pressing. Hence, while they might be encouraged in a general way by Innocent's policy to volunteer their service on the crusade, the encouragement was neither so explicit nor so forcible as that given to married laymen.

A second observation has to do with the treatment of these two categories by the canonists. The writers who commented on the decretals were notably conservative in their treatment of the crusade and pilgrimage vows of monks. Although the texts which they glossed would have supported some wide-ranging conclusions about the freedom of monks to make crusade vows, those conclusions were not drawn. It is probably no coincidence that a similarly conservative attitude is evident in the commentaries on *Ex multa* and that in both cases the ultimate result was to abrogate the innovations which Innocent III had tried to introduce into the discipline of the Church in its treatment of the crusade vow.

23. X 3.34.9. In addition to the references given for this decretal in my earlier paper, cited above, it should now be noted that it is also calendared by C. R. and M. G. Cheney in *The Letters of Pope Innocent III (1198-1216) Concerning England and Wales*, (Oxford, 1967) no. 350, pp. 57-58.

XIV

The Thirteenth-Century Livonian Crusade: Henricus de Lettis and the First Legatine Mission of Bishop William of Modena*

The conquest and colonization of the Eastern coast of the Baltic Sea by the Germans in the thirteenth century confront the historian with a cluster of paradoxes. The main instrument of this expansion movement, for one thing, was the Latin Christian Church, a Church which was founded on the Gospel ethic of love. Yet the expansion in this area, under the patronage of the Church and under the direction of its prelates, was a hard-hitting military enterprise, characterized by savage fighting, by the forced conversion of subjugated populations, and frequently enough by the ruthless extermination of those who resisted.¹ The historian can account for these characteristics of the expansion, at least in part, by tracing their roots in the earlier history of the expansion of the Franks beginning with Charlemagne. But here he finds another paradox, for the juridical basis of the Carolingian and Ottonian expansion movements was entirely different from the juridical basis of the German expansion in the Baltic. The thirteenth-century expansion in the Baltic was undertaken as a crusade and employed the methods developed during the twelfth-century crusades both in order to justify and also in order to organize and carry out the Baltic expansion movement. And in this there is still another paradox. The twelfth-century crusades had developed some juristic devices for recruiting soldiers, for bestowing privileges on them, and for requiring the participants to complete the obligations which they had assumed by joining in the crusade — but all of these stemmed from the character of the crusader as a pilgrim. This was plausible enough when the Church was dealing with crusaders who were going to Palestine. The status of crusading

* This paper is dedicated to the memory of Professor Edgar N. Johnson (1901 — 1969), a pioneer American student of German expansion in the Baltic, who first introduced me to the *Chronicle of Henry of Livonia*.

¹ These characteristics are amply documented by the major narrative source for the early period of Baltic expansion, the *Chronicle of Henricus de Lettis*. For the Latin text see: *Heinrichs Livländische Chronik*. (Heinrici Chronicon Livoniae.) 2nd ed. by LEONID ARBUSOW and ALBERT BAUER. Hannover 1955 = MG. Scriptores rer. Germ. in us. schol. (cited hereafter as *Chronicle*, ed. ARBUSOW, BAUER). For an English version see also: *The Chronicle of Henry of Livonia*. A translation with introduction and notes by JAMES A. BRUNDAGE. Madison 1961 = *Documents from Mediaeval Latin* (cited hereafter as *Chronicle*, tr. BRUNDAGE).

This paradox is briefly noted by HERMANN DÖRRIES *Fragen der Schwertmission*, in: REINHARD WITTRAM (ed.) *Baltische Kirchengeschichte. Beiträge zur Geschichte der Missionierung und der Reformation, der evangelisch-lutherischen Landeskirchen und des Volkskirchentums in den baltischen Landen*. Göttingen 1956, pp. 17 — 25. See also in the same collection, pp. 26 — 34, ALBERT BAUER *Der Livlandkreuzzug*, as well as BENNO ABERS *Zur päpstlichen Missionspolitik in Lettland und Estland zur Zeit Innozenz' III.*, in: *Commentationes Balticae* 4/5 (1956/57) pp. 1 — 18. Some more general comments on the crusades and papal policy in Eastern Europe are offered by HELMUT BEUMANN *Kreuzzugsgedanke und Ostpolitik im hohen Mittelalter*, in: *Historisches Jahrbuch* 72 (1953) pp. 112 — 132.

warriors as pilgrims was natural and credible when they were bound for the Holy Land, where they could be expected to visit the sacred shrines as a normal part of their crusading activity. But in the thirteenth century, when this whole legal mechanism stemming out of the pilgrimage tradition was applied to the Baltic area, then the pilgrim character of the crusader was clearly being employed as a legal fiction.² In thirteenth-century Livonia there were no sacred shrines to which anyone could make a pilgrimage.

This paper will examine some aspects of this legal fiction as they are illustrated by the major narrative source for the early thirteenth-century crusade in Livonia, the *Chronicle of Henricus de Lettis*, and it will also examine the implications for these Livonian crusades of the first legatine mission of Bishop William of Modena.

To begin with, we must take some account of the development of the crusade outside of the Holy Land. The original crusade ventures were initiated by the papacy in order to recover the sacred shrines of the Holy Land, as well as to secure some other objectives of papal concern in the Near East. It is well known that from a very early point in the history of their development, the crusades were broadened to include the recovery of other territories formerly ruled by Christians which had been occupied by Muslim conquerors, particularly in Spain. From the beginning, the notion was implicit in the crusades that these expeditions were holy wars against Islam. As is also well-known, in the middle of the twelfth century, at the time of the so-called second crusade, the mission of the crusades was broadened to include holy war against non-Muslim peoples, especially against the Slavic tribes who lived on Germany's Eastern frontiers.³ Subsequently, the use of the crusade was extended even further, into the Baltic area, notably by Pope Alexander III in 1171/1172. The crusade which Pope Alexander authorized was directed specifically against the Esthonians and those who participated in it were granted the same type of "indulgence" (or, more accurately, commutation of penance) which was promised to those who participated in the crusades to the Holy Land.⁴

² On these matters see especially JAMES A. BRUNDAGE *Medieval Canon Law and the Crusades*. Madison 1969.

³ E. CASPAR, P. RASSOW *Die Kreuzzugsbullen Eugens III.*, in: *Neues Archiv* 45 (1924) pp. 285 — 305; PH. JAFFÉ (et al. ed.) *Regesta Pontificum Romanorum*. 2nd ed. 2 vols. Leipzig 1885 — 1888; Reprint Graz 1956 (cited hereafter as JL), No. 9017; J.-P. MIGNE *Patrologiae cursus completus. Series Latina*. 221 vols. Paris 1844 — 1864 (cited hereafter as PL). Vol. 180, col. 1203; *Ottonis et Rahewini Gesta Friderici I. Imperatoris*. 3rd ed. by G. WAITZ and B. DE SIMSON. Hannover, Leipzig 1912, lib. I, cap. 35, 42 (pp. 55 — 57, 61 — 62) = MG. *Scriptores rer. Germ. in us. schol.* See also the studies by GILES CONSTABLE *The Second Crusade as Seen by Contemporaries*, in: *Traditio* 9 (1953) pp. 213 — 279, and VIRGINIA G. BERRY *The Second Crusade*, in: *A History of the Crusades*. Ed.-in-Chief: KENNETH M. SETTON. 2nd ed. Madison 1969 ff. (in progress; 2 vols. to date). Vol. 1, pp. 463 — 512; URSULA SCHWERIN *Die Aufrufe der Päpste zur Befreiung des Heiligen Landes von den Anfängen bis zum Ausgang Innozenz IV. Ein Beitrag zur Geschichte der kurialen Kreuzzugspropaganda und der päpstlichen Epistolographie*. Berlin 1940 = *Historische Studien* No. 366; Reprint Vaduz 1965, pp. 35 — 50. In addition, see the studies by H.-D. KAHL, H. PATZE, and others conveniently collected in HELMUT BEUMANN (ed.) *Heidenmission und Kreuzzugs-gedanke in der deutschen Ostpolitik des Mittelalters*. Darmstadt 1963 = *Wege der Forschung* vol. 7.

⁴ *Liv-, Esth- und Curländisches Urkundenbuch nebst Regesten*. Ed. by FRIEDRICH GEORG V. BUNGE (et al.). Series I. 12 vols. Reval (imprint varies) 1853 — 1910 (cited hereafter as LUB).

The crusade was still further extended, according to the evidence of Henricus de Lettis, to include the military expeditions against the Livonians in 1195 or thereabouts and this proclamation of a Livonian crusade was renewed in 1197 or 1198.⁵ We are entirely dependent on the evidence of Henry's Chronicle for our knowledge of these two earliest proclamations of the crusade in Livonia. The papal letters upon which his account was presumably based have not survived. The earliest surviving papal letter dealing with the Livonian crusade was issued by Pope Innocent III and is dated October 5, 1199.⁶ In this document we have some novel elements which, I believe, reflect the beginning of some basic changes in papal crusading policy which commenced with the pontificate of Innocent III. In his letter of 1199, for one thing, Innocent specifically provided that those who had vowed to go on pilgrimage might commute their pilgrimage vow by participating in the Livonian crusade. This was scarcely the first time that the papacy had allowed the commutation of a pilgrimage vow in return for participation in a crusade, to be sure, but it does mark the beginning of a routine, wholesale use of the papacy's power to commute such vows, a development which was radically to change the nature of the crusading enterprise during the thirteenth century and later. The letter of 1199 also extended to those participating in the Livonian crusade the right to enjoy the papal protection, a basic privilege already enjoyed by crusaders in other areas.⁷ This feature indicates the further assimilation at this stage of the Livonian crusade to the other crusade expeditions of the period.

The Chronicle of Henricus de Lettis fills in some other details of the picture at the very end of the twelfth century. From this source we learn that the warriors in Livonia were employing the insignia of the cross.⁸ Now anyone who has read what the canon lawyers have to say about this matter will realize that the employment of this insignia is freighted with legal implications. The wearing of the cross established in effect a legal presumption that the wearer was bound by a crusade vow. In virtue of that vow, the wearer was also presumed by law to be under certain legal obliga-

Vol. 1, No. 5 (cols. 5—6); PL vol. 200, cols. 860—861; JL No. 12118; NIKOLAUS PAULUS *Geschichte des Ablasses im Mittelalter vom Ursprung bis zur Mitte des 14. Jahrhunderts*. 3 vols. Paderborn 1922—1923. Vol. 1, pp. 201—202; and cf. BRUNDAGE *Medieval Canon Law* pp. 145—149.

⁵ Chronicle I,12 and II,3 (ed. ARBUSOW, BAUER pp. 7, 9; tr. BRUNDAGE pp. 30, 32); cf. *Livländische Reimchronik. Mit Anmerkungen, Namenverzeichnis und Glossar* hrsg. von LEO MEYER. Paderborn 1876; Reprint Hildesheim 1963, lines 875—882 (p. 21).

⁶ LUB vol. 1, No. 12 (cols. 13—15); Innocent III. *Registrum lib. II*, No. 191, in: PL vol. 214, cols. 739—740; A. POTTHAST (ed.) *Regesta Pontificum Romanorum*. 2 vols. Berlin 1874—1875; Reprint Graz 1957, No. 842; Chronicle III,2 (ed. ARBUSOW, BAUER p. 12; tr. BRUNDAGE pp. 35—36).

⁷ LUB vol. 1, No. 12 (cols. 14—15): „Nos autem omnibus de partibus vestris, qui sanctorum limina visitare voverunt, praesentium auctoritate concedimus, ut in voti commutatione emissi, in defensionem Livoniensis ecclesiae ad partes illas, pro reverentia nominis Christiani, procedant. Omnes siquidem, qui ad defendendam Livoniensem ecclesiam et Christianos in illis partibus constitutos divino zelo succensi duxerint transeundum, sub beati Petri et nostra protectione suscipimus, et eis apostolici patrocinii beneficium impertimur.“

⁸ E. g. Chronicle I,12, II,3, III,2, VIII,2 (ed. ARBUSOW, BAUER pp. 7, 9, 12, 24; tr. BRUNDAGE pp. 30, 32, 35, 46).

tions.⁹ The fundamental obligation was to participate in a papally proclaimed military expedition and it is primarily from Henry's Chronicle that we learn what that participation involved for those who enlisted in the Livonian crusade. For the crusader in this area, unlike the crusaders in the Holy Land, was held to a chronologically defined term of service, a term of one year. Sometimes individuals chose to extend this term of service for an additional period, but the crusader was always bound to complete a minimum of a year's service.¹⁰

The recruitment of the crusaders for this area was undertaken primarily by a single individual, Bishop Albert of Riga, who was expressly commissioned for this task by the pope. Apparently the commissioning of Bishop Albert as a crusade preacher was done at the bishop's own request. The primary initiative for the Livonian crusade seems to have come wholly from Albert, and not from the pope, as was normal in other crusading enterprises.¹¹

The Livonian crusade thus falls into the legal and organizational framework of the other crusade ventures of the late twelfth and early thirteenth century Church. It employed the insignia, the privileges, the obligations, and the sanctions of the crusade as a mechanism for raising men to form crusading armies and for keeping them in the ranks once they had committed themselves to the venture. Beyond this, however, Henry's Chronicle shows us that the Livonian crusade differed in a number of features from the crusades in other areas. Some of these different features are relatively technical, minor matters. These have already been mentioned. There were other differences which were more substantial.

One of the substantial features which distinguished the Livonian crusade from other crusade expeditions was the fact that the expeditions which went to Livonia were not accompanied by a papal legate. In other crusades, since the beginning of their history, a legate had always been appointed as the pope's representative with the army of the crusaders.¹² Frequently the preaching of the crusade was done by a legate. But even when a legate was not named as a preacher of the crusade, a papal legate of some sort represented the pope's interests in the ranks of the crusading expedition. Some legates took an active part in the military actions of the expeditions which they accompanied and in one well-known case the legate not only dictated the grand strategy of the crusade, but also acted virtually as field commander of the crusading

⁹ BRUNDAGE *Medieval Canon Law* pp. 84—85, 118—122.

¹⁰ E. g. Chronicle VII,3, VIII,2 (ed. ARBUSOW, BAUER pp. 20, 24; tr. BRUNDAGE pp. 43, 45—46).

¹¹ E. g. Chronicle III,2, VIII,1, IX,6, X,11, 17 (ed. ARBUSOW, BAUER pp. 12, 23, 28, 41, 47; tr. BRUNDAGE pp. 35, 45, 50, 62, 68). Especially illuminating is the account of the confirmation and renewal of the commission for the Livonian crusade at the fourth Lateran Council in 1215: Chronicle XIX,7 (ed. ARBUSOW, BAUER pp. 131—132; tr. BRUNDAGE p. 152).

¹² This had been the pattern since the first crusade, when Bishop Adhémar of Le Puy was designated to accompany the army of the crusade. On his mission see JAMES A. BRUNDAGE *Adhémar of Puy: The Bishop and His Critics*, in: *Speculum* 34 (1959) pp. 201—212, and more generally, JEAN RICHARD *La Papauté et la direction de la première croisade*, in: *Le journal des savants* (1960) pp. 49—58. The role of legates in subsequent crusades had not been the subject of any comprehensive study, although the careers of some individual legates have been investigated. In any event, all of the major crusade expeditions, without exception, were accompanied by legates.

army and determined the solution of tactical problems as well.¹³ More commonly, however, legates on crusade served mainly as spokesmen for the papacy on matters of political and spiritual policy. Their primary function was to see that the actions of the crusaders were kept in line with the objectives of the papacy in sanctioning the crusade. To achieve this goal, the crusading legate received from the pope a mandate or commission which empowered him to represent the wishes of the pope, just as if the pope were personally present with the crusading army. The crusading legate commonly functioned, in other words, in much the same way as did what was later called a *legatus a latere*.¹⁴

The first legate appointed by the pope to deal directly with Livonian affairs was Bishop William of Modena. William received the mandate for his earliest legatine mission to Livonia only at the very end of 1224, some thirty years after the crusade had first been proclaimed in this area.¹⁵ That itself is distinctly unusual. Even odder is the fact that Henry's Chronicle tells us that the appointment of the legate was requested by the Bishop of Riga.¹⁶ Normally papal legates on crusades were appointed by the pope on his own motion, without any request from local churchmen. Perhaps this might be interpreted to mean that Bishop William was not being appointed as a crusading legate at all, especially in view of the fact that his mandate does not even mention the crusade explicitly. On the other hand, it is hard to interpret his mission as something other than that of a crusading legate, particularly since the fulfillment of his mission clearly required him to regulate the organization of the lands conquered by the crusaders and to deal with the lines of authority established between the various crusading forces in the conquered region. All in all, it seems most probable that his mission should be classified with those of the crusading legates, although it demonstrably had some peculiar features of its own.

The Chronicle of Henricus de Lettis was in all probability written in connection with the appearance of the papal legate in Livonia and it was most likely designed

¹³ This was Cardinal Pelagius, legate on the fifth crusade. For his career see especially JOSEPH P. DONOVAN *Pelagius and the Fifth Crusade*. Philadelphia 1950.

¹⁴ There is an abundant literature on papal legates and the development of their powers of representation. Most helpful are: F. CLAEYS-BOUUAERT *Légat du pape*, in: *Dictionnaire de droit canonique*. Publié sous la direction de R. NAZ. 7 vols. Paris 1935–1960. Vol. 6, cols. 371–377; JOHN W. PERRIN *Legatus, the Lawyers, and the Terminology of Power in Roman Law*, in: *Studia Gratiana* 11,1 (1967) pp. 461–489 (= *Collectanea Stephan Kuttner* vol. 1); H. K. LUXARDO *Das päpstliche Vordekretalengesandtschaftsrecht*. Innsbruck 1878; FRANZ WASNER *Fifteenth Century Texts on the Ceremonial of the Papal „Legatus a latere“*, in: *Traditio* 14 (1958) pp. 295–358 and IDEM *Legatus a latere: Addenda et varia*, in: *Traditio* 16 (1960) pp. 405–416; HEINRICH ZIMMERMANN *Die päpstliche Legation in der ersten Hälfte des 13. Jahrhunderts. Vom Regierungsantritt Innocenz' III. bis zum Tode Gregors IX. (1198–1241)*. Paderborn 1913 = *Görres-Gesellschaft. Veröffentlichungen der Sektion für Rechts- und Sozialwissenschaft* vol. 17; P. HINSCHIUS *Das Kirchenrecht der Katholiken und Protestanten in Deutschland*. 6 vols. Berlin 1869–1897; Reprint Graz 1959. Vol. 1, pp. 498–522. On related types of diplomatic representation see also DONALD E. QUELLER *The Office of Ambassador in the Middle Ages*. Princeton 1967, and GARRETT MATTINGLY *Renaissance Diplomacy*. Baltimore 1964, pp. 15–44.

¹⁵ LUB vol. 1, Nos. 69, 72 (cols. 73–75, 77).

¹⁶ Chronicle XXIX,2 (ed. ARBUSOW, BAUER p. 208; tr. BRUNDAGE pp. 229–230); cf. *Livländische Reimchronik* (ed. MEYER) lines 1320–1322 (p. 31).

originally to serve as a report to the legate on the origin, progress, and achievements of the crusade in Livonia. The author tells us that his *Chronicle* was in some sense a commissioned work, written at the urging of his lords and companions.¹⁷ Both the organization of the main part of the work, which is internally divided according to the years of Bishop Albert's pontificate, and also the generally adulatory treatment of Bishop Albert's actions indicate that one of the "lords" who commissioned the writing of the work was the Bishop of Riga himself. This is the more understandable in light of the fact that Henry was also a former pupil of Bishop Albert.¹⁸ It seems likely that Albert commissioned the writing of the *Chronicle* both as a memorial to his own achievements and also as a brief to represent his views of the outstanding problems of the Livonian mission to the papal legate, William of Modena.¹⁹

With this in mind, it is possible to read Henry's account of the legatine mission of Bishop William with greater insight and understanding. The activities which Henry emphasized in his account of William's work in the Baltic fall into three categories. The legate dealt (1) with converts to Christianity among the Baltic peoples; (2) with relationships between various groups of Christian warriors, missionaries, and settlers in the area; and (3) with the non-Christian powers of the region. In addition, William gave some attention also to methods of regularizing internal procedures and practices within the Church in the Baltic area. In this last his objective was to bring the ecclesiastical practices of the Baltic Church into line with recent reforms and innovations, particularly those inaugurated by the fourth Lateran Council.²⁰ In large part the matters emphasized by Henricus in his report of the legatine mission of William of Modena were also matters of primary concern to the legates who dealt with crusading armies elsewhere, in the Holy Land, in Spain, or in Southern France, for example. William was also concerned with reporting his decisions and his findings to Rome, as other papal legates of all kinds normally did.²¹

The surviving documents from William of Modena's first legation to Livonia confirm in part the report of the legate's activities which Henry's *Chronicle* provides. The great majority of the surviving documents relating to the mission deal with problems arising out of rivalries and tensions within the Church in Livonia and neighboring areas.²² The documents show the papal legate hearing the arguments of the interested

¹⁷ *Chronicle* XX,9 (ed. ARBUSOW, BAUER p. 215; tr. BRUNDAGE p. 237).

¹⁸ *Chronicle* XI,7 (ed. ARBUSOW, BAUER p. 55; tr. BRUNDAGE p. 75).

¹⁹ These matters have been extensively discussed; see especially PAUL JOHANSEN *Die Chronik als Biographie. Heinrich von Lettlands Lebensgang und Weltanschauung*, in: *Jahrbücher für Geschichte Osteuropas*. N. F. 1 (1953) pp. 1—24, and ALBERT BAUER's *Einleitung* to the Arbusow-Bauer edition of Henry's *Chronicle* (pp. XVIII—XXII).

²⁰ *Chronicle* XXIX, 2—8, XXX, 1—2 (ed. ARBUSOW, BAUER pp. 208—216; tr. BRUNDAGE pp. 229—239).

²¹ He dispatched an initial report as soon as he arrived at Riga: *Chronicle* XXIX,2 (ed. ARBUSOW, BAUER p. 208; tr. BRUNDAGE p. 230). He presumably made his final report after his return to Rome in the summer of 1226; Honorius III referred to such a report in a letter dated 11 December 1226: LUB vol. 1, No. 93 (cols. 111—113).

²² These documents are published in LUB vol. 1, Nos. 74—76 (cols. 79—84), Nos. 78—79 (cols. 90—93), and Nos. 82—89 (cols. 97—106). Cf. REINHARD WITTRAM *Baltische Geschichte. Die Ostseelände Livland, Estland, Kurland 1180—1918. Grundzüge und Durchblicke*. München 1954, p. 23 (= *Geschichte der Völker und Staaten*).

parties, reviewing the written evidence, and rendering decisions on the disputes referred to him. His dealings with the converted populations in the area have left only scattered traces in the documents, while records of his dealings with the Russian princes of Novgorod and Gerzike and with the non-Christian powers of the region do not seem to have survived at all.

But perhaps the most important effects of William's legatine mission to the Baltic appear later and are thus not reflected at all in Henry's Chronicle or in the documents arising directly from the mission itself. Apparently the reports of William's mission (which have also failed to survive) made a considerable impression at Rome. This is reflected by the fact that William was later commissioned as a papal legate to Livonia on two subsequent occasions, in 1229–1230 and in 1234–1242.²³ A more immediate reaction, however, is shown by a series of papal documents issued in the months following William's return to Italy in 1226. The Roman chancery, which had previously paid little attention to Baltic affairs, and indeed, had been remarkably uncertain even about the geography of the area, suddenly issued a series of letters and decrees concerning Livonian affairs shortly after William's return from the Baltic.²⁴

There can be little doubt that this newly awakened interest was inspired by the reports which William of Modena made concerning his mission. It is particularly instructive to note the new interest of the papacy in the status of crusaders who were destined for the Baltic region. Whereas previously papal instructions dealing with these crusaders had tended to be somewhat vague and had displayed relatively slight interest in the privileges accorded to these warriors, it is noticeable that after 1226 papal privileges were much more lavishly granted to crusaders in this area and the nature of their privileges is described in far greater detail than had previously been done.²⁵ In part this was due, certainly, to the fact that after William's accounts of his mission had been received, the papacy was more clearly aware of the potential gains to be made in this area (and also of potential dangers to Christian interests there) than previously it had been.

But this new interest in Baltic affairs also seems to reflect a change in more basic papal policies regarding the crusades, a change which may well have been accelerated and stimulated by William's mission. The new policy sought to bring the crusades in all of their aspects more closely under papal control than the twelfth-century crusading expeditions had been. This new interest on the part of the popes in controlling the activities of crusaders was doubtless based in part upon the need which the papacy felt to assert its military power (of which the crusade was at this time the most potent arm) in the face of challenges to papal authority from the newly emerging monarchies of the West. In addition the new approach to the crusades envisioned a closer papal control over the territories conquered by crusading armies than had been achieved in the past. The pattern of territorial control for the regions conquered by the earlier crusades had involved the establishment of independent

²³ ZIMMERMANN *Die päpstliche Legation* pp. 118–119, 123.

²⁴ LUB vol. 1, Nos. 91–95 (cols. 109–115).

²⁵ LUB vol. 1, No. 92 (col. 110).

monarchies in them, responsible only in the most sluggish way to papal policy and directives. This is the pattern which we find in the Latin States of the Near East which were established as a result of the first crusade. The new pattern envisioned the crusades as instruments of papal policy. The crusades would conquer territories which would then be organized as ecclesiastical states, closely subject to papal control. The mission of Bishop William of Modena and the subsequent actions of Pope Honorius III and his immediate successors with regard to Livonia appear to be directed toward some such goal as this.

One further aspect for the matter should be mentioned. That is the link between missionary activities and the crusades.²⁶ The early crusading expeditions had sought to conquer territories, but had not emphasized to any marked degree the conversion of the inhabitants of the conquered territories to Christianity. The only major exceptions to this pattern were the Slavic crusade and the crusades against the Moors in Spain. The Slavic crusade of 1143 failed to achieve its major military objectives, although its missionary activity was more successful. The Spanish Expeditions ultimately scored success on both scores. The Livonian crusade, however, had a strong missionary emphasis from the beginning and was eminently successful. The Chronicle of Henricus de Lettis underscores the interest of Bishop William of Modena in the missionary aspects of the Livonian situation and subsequent papal letters dealing with the Baltic area reiterated this interest. The Livonian crusade was the first significantly successful effort to couple missionary activity with crusading conquest, and the papal legate's report to Honorius III must have remarked on this development. The pattern which developed in Livonia and Esthonia continued, with some additions and variations, in Prussia during the next two decades.²⁷ However,

²⁶ HELMUT ROSCHER *Papst Innocenz III. und die Kreuzzüge*. Göttingen 1969, pp. 198—213 (= *Forschungen zur Kirchen- und Dogmengeschichte* vol. 21) develops this general argument very persuasively. However, he contends that the beginnings of this policy go back to the pontificate of Innocent III and that the pontificate of Honorius III saw no significant change in the area. The increasing interest in the Baltic mission which is reflected by the legatine mission of William of Modena and the papal letters of 1226 et seq. relating to Livonia are probably more significant than Roscher indicates. A. M. AMMANN *Kirchenpolitische Wandlungen im Ostbaltikum bis zum Tode Alexander Newski's*. Studien zum Werden der russischen Orthodoxie. Roma 1936, pp. 175—177, 182—187 (= *Orientalia Christiana Analecta* vol. 105) makes some perceptive observations on William's first legatine mission, but fails to indicate the broader implications of these events for papal crusade policy. A more detailed account, although it centers mainly upon the interests of the Order of Sword Bearers, is given by FRIEDRICH BENNINGHOVEN *Der Orden der Schwertbrüder. Fratres milicie Christi de Livonia*. Köln, Graz 1965, pp. 193—209 (= *Ostmitteleuropa in Vergangenheit und Gegenwart* vol. 9). There is a very thorough biographical study of the career of William of Modena by G. A. DONNER *Kardinal Wilhelm von Sabina. Bischof von Modena 1223—1234. Päpstlicher Legat in den nordischen Ländern († 1251)*. Helsingfors 1929 = *Commentationes humanarum litterarum* vol. 2,5. On the relations between the papal legate and the Bishop of Riga, see GISELA GNEGEL-WAITSCHIES *Bischof Albert von Riga. Ein Bremer Domherr als Kirchenfürst im Osten (1199—1229)*. Hamburg 1958, pp. 152—157 (= *Nord- und osteuropäische Geschichtsstudien* vol. 2).

²⁷ Gregory IX proclaimed a general crusade against the Prussians in 1232: *Les registres de Grégoire IX. Recueil des bulles de ce pape. Publiées ou analysées par LUCIEN AUVRAY*. 4 vols. Paris 1896—1955 (= *Bibliothèque des écoles françaises d'Athènes et de Rome*. II^e série. Vol. 9, 1—4). Vol. 1, No. 754; POTTHAST (ed.) *Regesta Nos. 8848, 8868*. Crusade

the example of the Baltic crusader-missionaries was not emulated in any other area until much later. Only in the sixteenth century do we find a parallel strategy successfully employed again — this time by the *conquistadores* in America. The missionary conquests of the Spaniards in the New World employed a remarkable number of ideas and techniques which were first worked out successfully in thirteenth-century Livonia.

The legatine mission of William of Modena marks a stage of some significance in the development of papal policy toward the crusades in general and particularly toward the territories and peoples conquered by crusaders. The changes involved in this episode in the history of the Baltic crusade played an important part in the transformation of the later medieval crusades which formed the legal and organizational basis for the conquest of Latin America.

privileges had been granted to warriors in Prussia by Honorius III as early as 1217: *Regesta Honorii Papae III* . . . ed. PETRUS PRESSUTTI. 2 vols. Roma 1888 — 1895, No. 389; POTTHAST (ed.) *Regesta* No. 5481. This letter specified that participation in the Prussian crusade would not serve as a satisfactory fulfillment for a vow to participate in the Holy Land. Apparently this was a matter on which the pope's policy was not entirely consistent, for earlier in the same year Honorius had ruled that participation in the Livonian crusade would satisfy the obligations arising from a vow to go on crusade to the Holy Land: *Regesta Honorii* (ed. PRESSUTTI) No. 276; POTTHAST (ed.) *Regesta* No. 5433. By the middle of the century the commutation of the Holy Land vow by participating in the Livonian crusade had become a matter of common form: Marinus of Eboli, the Vice-Chancellor of Pope Innocent IV, included in his *Formularium* two examples of form letters approving the substitution of the Livonian expedition in place of the crusade to the Holy Land (*Bibliotheca Apostolica Vaticana*, ms. Vat. lat. 3976, fol. 205^{r-v}).

THE CRUSADER'S WIFE: A CANONISTIC QUANDARY

SUMMARY: The medieval canonists' treatment of the position of the wife of a crusader centered upon two problems: (1) the conflict between the marital obligations of a would-be crusader and the votive obligations resulting from his crusade commitment; and (2) the problem of the remarriage of the wife of a crusader who disappeared permanently or for an extended period. Only the first of these problems is dealt with here. One major difficulty is presented by the problem of the consent of the wife to her husband's proposal to undertake a crusade. Ivo of Chartres, Gratian, and most of the twelfth-century decretists assumed that the mutual consent of the spouses was required for this purpose. At the beginning of the thirteenth century, however, two decretals of Innocent III altered the existing law, especially by a provision that husbands might make the crusade vow without the consent of their wives. The decretalist treatment of these decretals was conservative and reserved. St. Thomas Aquinas effectively rejected on moral grounds the legal right of husbands to assume the crusade obligation without their wives' consent if there were reason to fear that their wives might thereby be led into infidelity.

SUMMARIUM: Scriptores de iure canonico medio aevo agitaverunt duas quaestiones de statu uxorum cruce signatorum: primo, utrum pugnent inter se obligationes conjugum et obligationes cruce signatorum; secundo, an uxores cruce signatorum possint nubere maritis alteris si viri sui abiissent sive diu seu in perpetuum. Prima tantum quaestio tractanda est in hoc scripto. Assensum uxoris maritus obtinere debet ut peregrinetur in terram sanctam secundum doctrinam Ivonis Carnotensis, Gratiani, et decretistarum quamplurium saeculi XII. Ineunte saeculo XIII tamen decretalibus duabus Innocentii III PP. legislatio mutata est. Decretales istae imprimis statuerunt ut mariti et libere vovere possent expeditiones in subsidium terrae sanctae absque uxorum suorum assensu faciendas et libere quod vovissent adimplere possent. Decretalists summa cum cautione tractaverunt has duas decretales et eas semper stricte interpretati sunt. Sanctus Thomas Aquinas praeterea rejecit doctrinam Innocentii decretalium, immo docuit maritis non esse consulendum ut acciperent crucem et dimitterent uxores si de incontinentia earum timerent [*J. A. B.*].

Et les dames qui chastement vivront
 Se loiauté font a ceus qui ivont;
 Et s'eles font par mal conseil folage,
 A lasches genz et mauvais le feront,
 Car tuit li bon iront en cest voiage (1).

(1) CONON DE BETHUNE, *Chanson de croisade*. [This paper is based in large part upon research conducted with the aid of generous grants from the John Simon Guggenheim Memorial Foundation and the Graduate School of the University of Wisconsin. To both of these bodies the author wishes to express his thanks].

* * *

The position of the wife of a crusader presented a continuing and delicate problem for medieval canonists and popes who were bent on stimulating Western European knights and soldiers to take the cross and to preserve the Holy Land from Muslim domination. Two facets of this problem vexed the canonists in particular: first, they found difficulty in reconciling the obligations flowing from the crusade vow with those resulting from the bonds of marriage. Second, there was the perplexing problem of how to deal with the plight of women whose husbands had gone on crusade and had failed, for whatever reason, to return. Both of these problems and the efforts of ecclesiastical legislators and legal writers to grapple with them are of interest insofar as they affected the efforts of the canonists to create a juristic mechanism to regulate the crusades and also insofar as they affected the development of canonistic doctrines relating to marriage itself. Although both problems present numerous points of interest, only the first of them will be dealt with here; a treatment of the second problem will be reserved for a subsequent paper.

The problem of the conflict between marital obligations and crusade obligations arose in part from the real and serious problem of the temptations against marital fidelity which might present themselves to the wife who was left behind at home while her husband was engaged for a year (or quite possibly much longer) in fighting the Muslims in the Holy Land. A further difficulty arose from the somewhat more technical, though no less real, conflict over the right of a husband to take any kind of vow: must he first secure the consent of his wife before assuming a votive obligation? If so, did this apply to the crusade vow (2) or only to vows of continence or chastity?

(2) That a vow to participate in the crusade was a usual, indeed, a vital part of the crusade institution from its very beginning is assumed by all of the contemporary chroniclers and narrative writers from the time of the first crusade onwards. See especially FULCHER of Chartres, *Historia Hierosolymitana* 1. 4. 4, ed. HEINRICH HAGENMEYER (Innsbruck, 1913) pp. 140-142; ROBERTUS MONACHUS, *Historia Iherosolomitana* 1. 2 in *Recueil des historiens des croisades, Historiens occidentaux*, 16 vols. in 17 (Paris, 1841-1906; hereafter cited as *RHC, Occ*) 3. 729-730; and cf. the accounts of BALDRIC of Dol, *Historia de peregrinatione Jerosolimitana* 1 (*RHC, Occ* 4. 16) and GUIBERT of Nogent, *Gesta Dei per Francos* 2. 5 (*RHC, Occ* 4. 140). In addition, Urban II himself mentioned the crusade vow casually in his letter of December 1095 to the Flemings; *Epistulae et chartae ad historiam primi belli sacri spectantes* (Innsbruck, 1901) p. 137. ALBRECHT NOTH, *Heiliger Krieg und heiliger Kampf in Islam und*

Both aspects of this problem were perceived by Pope Urban II when he proclaimed the first crusade. Writing in September, 1096, to the people of Bologna, the pope urged their participation in the crusade expedition, but cautioned that "care should be taken lest young married men heedlessly set out on this journey without the consent of their wives" (3). The obvious consideration which dictated this warning was the fact that the departure of a husband upon crusade made it impossible for him to render to his wife the marriage debt, which both canonists and theologians, following St. Paul (4), regarded as a basic and continuing obligation of both parties to a marriage contract, an obligation which could be set aside only with the mutual consent of the contracting parties (5). Among the fathers

Christentum (Bonn, 1966; *Bonner historische Forschungen*, 28) pp. 120-139, has recently postulated that the vow was not a part of the pope's original design for the crusade and did not figure in the sermon at the Council of Clermont which inaugurated the crusade. Rather, NOTH conjectures that the crusaders themselves conjured up the idea of a votive obligation arising from the act of taking the cross in order to keep the crusade army from disintegrating during the siege of Antioch and that this idea was subsequently accepted and elaborated by Pope Paschal II in 1099. NOTH's hypothesis, which is more ingenious than convincing, depends upon an unlikely exegesis of the texts (particularly Urban II's letter to the Flemings), an assumption that there was wholesale misunderstanding or misrepresentation of the pope's sermon at Clermont by the best witnesses and reporters of what occurred there, and (perhaps most unlikely of all) the supposition that the princes who led the crusade were willing and able to impose a *post facto* votive obligation upon themselves, an obligation, moreover, which the masses of their followers were willing to accept. To say that all of this seems extremely implausible is to understate the case. For other discussions of the crusade vow and the votive obligations of crusaders, see MICHEL VILLEY, *La Croisade, essai sur la formation d'une théorie juridique* (Paris, 1942; *L'Eglise et l'état au moyen âge*, 6) pp. 119-127, and more recently, VILLEY's paper, *L'Idée de la croisade chez les juristes du moyen âge* in: *Relazioni del X Congresso Internazionale delle Scienze Storiche*, 6 vols. (Roma, 1955) 3. 581-586; also J. A. BRUNDAGE, *A Note on the Attestation of Crusaders' Vows* in: *Catholic Historical Review* 52 (1966) 234-239, and my forthcoming paper, *The Votive Obligations of Crusaders: The Development of a Canonistic Doctrine*.

(3) HAGENMEYER, *Epistulae et chartae* p. 138: *Iuuenibus etiam coniugatis prouidendum est, ne temere tantum iter sine conuiuentia uxorum suarum adgrediantur*. It is significant, too, that this passage in Pope Urban's letter follows directly after a similar warning to clerics and monks that they might not participate in the crusade without the consent of their bishops and abbots, while bishops were also cautioned not to desert their sees without first consulting the clergy of their dioceses.

(4) I Cor. 7. 3-4: *Uxori vir debitum reddat, similiter autem et uxor viro. Mulier sui corporis potestatem non habet, sed vir; similiter autem et vir sui corporis potestatem non habet, sed mulier*.

(5) On this notion in the canonists, see PIETRO VACCARI, *La tradizione canonica del «debitum» coniugale e la posizione di Graziano* in: *Studia Gratiana* 1 (1953) 535-547.

of the Church, St. Augustine in particular emphasized the necessity of securing mutual consent before a married person might make a vow which would vitiate the right of the other party to marital intercourse (6). St. Augustine's opinions, in turn, were widely reflected by the canonists of the middle ages (7). One of the most influential of these canonistic writers, Ivo of Chartres, who compiled his great collections of canon law just at the time when the first crusade was taking shape, leaned very heavily on St. Augustine's work in his treatment of marriage, as even a casual consultation of his published collections will show. (8). In his *Decretum*, Ivo cited five passages from St. Augustine to support the view that a married person might not make a binding vow, which would tend to deny sexual intercourse to his spouse, unless the prior consent of the spouse had first been freely given (9). It may be fairly inferred from this that, in the view of the most important canonist of the age of the first crusade, the intending crusader was obliged to secure the consent of his wife before he could legitimately vow to participate in the crusade expedition. This inference from Ivo's canonistic collections is also borne out by an incident in his pastoral career. In a letter addressed to a nobleman who intended to participate in the crusade and who had vowed so to do, Ivo sternly warned his correspondent that the fulfillment of his crusade obligation must take second place to the fulfillment of his marital obligations. If his wife would not consent to his

(6) On the influence of St. Augustine in the formation of Catholic views of marriage, both medieval and modern, see especially JOHN T. NOONAN, JR., *Contraception: A History of its Treatment by the Catholic Theologians and Canonists* (Cambridge, Mass., 1965), Chapter 4 and *passim*.

(7) For some measure of the significance of Augustine's thought on marriage among the canonists, see JEAN GAUDEMET, *L'Apport de la patristique latine au Décret de Gratien en matière de mariage* in: *Studia Gratiana* 2 (1954) 51-81.

(8) Thus, for example, an examination of the inscriptions of the 334 canons of book 8 of Ivo's *Decretum*, dealing with marriage problems, shows that 64 of them, or just under 20% of the total, are ascribed to St. Augustine, far more than to any other single source. The next most frequently cited ecclesiastical writers are St. Jerome (21 citations) and St. Ambrose (17 citations). It is significant, too, in this tabulation to find a very large number of citations from the *Corpus iuris civilis*: 37 in all, or roughly 11% of the total.

(9) Ivo, *Decretum* 8. 98 (PL 161. 604) = *Panormia* 7. 47-48 (PL 161. 1291-1292) = C. 33 q. 5 c. 11 *Manifestum* and c. 16 *Noluit*; *Decretum* 8. 73 (PL 161. 599) = C. 32 q. 8 c. *un. Non solum*; *Decretum* 8. 133 (PL 161. 613) = C. 33 q. 4 c. 12 *Apostolus*; *Decretum* 8. 134 (PL 161. 613) = C. 33 q. 5 c. 6 *Una sola*; and *Decretum* 8. 136 (PL 161. 614) = *Panormia* 6. 80 (PL 161. 1260) = C. 33 q. 5 c. 4 *Quod Deo*.

absence on the crusade, then he must abstain from joining the crusade in order to satisfy his wife's desire for his company. Ivo further argued that his correspondent's crusade vow would be fulfilled at the expense of his wife; she would pay for his pious intentions, in other words, by being deprived of a legitimate sexual outlet because of her husband's absence. This, Ivo warned, might drive her to adultery and the responsibility for that would rest upon her absent husband, since he would have created the situation which led to this outcome (10). Thus already in Ivo's letter we have clearly stated the two themes which dominate the discussions of the decretists on the matter of the crusader's wife: the legal problem of the liceity of the vow of a married person and the moral problem of the temptations to adultery to which a crusader's absence might expose his wife.

That Ivo's fears on this latter score were far from imaginary is shown by another of his letters. Writing to Archbishop Daimbert of Sens, Ivo had earlier advised the archbishop about procedures to be employed with regard to some crusaders who had returned from the Holy Land to find their wives involved in adulterous liaisons. In such a case, Ivo advised, the judgement of the moral responsibilities of the parties had best be left to God. As for practical settlement of the case, Ivo urged Archbishop Daimbert to use his powers of ecclesiastical censure in order to force the crusaders either to take back their wives or else to remain separated from them and to lead lives of chastity (11).

The position of Ivo of Chartres on both of the major points here considered was fully supported by the great canonistic collection of Gratian a half century later. Gratian's treatment of the whole subject, however, is developed in the context of a fuller and more systematic treatment of the nature and character of the marriage bond than we find in Ivo's collections. Basic to Gratian's concept of marriage is the thesis that the basis of marriage is the consent of the contracting parties. Both Gratian and those who argued that marriage was contracted by consummation were agreed, however, that physical separation of the married parties does not terminate the marriage

(10) Ivo, *Epist.* 245 (PL 162, 251-253). I should like to thank Mr. Kenneth J. Pennington, Jr., who first drew my attention to this important letter.

(11) Ivo, *Epist.* 125 (PL 162, 136-138).

contract (12), and further that married couples may not separate from one another save by mutual consent. (13). Thus a married man, who has left his wife in order to enter a monastery and has done so without his wife's consent, may be required to return to her; he may not properly be received as a member of a monastic community until her consent to this arrangement has been obtained (14). Further, Gratian took the position that, not only might a man not properly vow continence without his wife's consent, but also should he make such a vow, he ought not observe it; his wife's consent, moreover, should not be extorted by threats or violence (15). As for the situation in which one of the parties had consented to a vow made by the other and then subsequently wished to revoke that consent, Gratian distinguished between the rights of husband and wife. Long ago Papinian noted: *In multis iuris nostri articulis deterior est condicio feminarum quam masculorum* (16) and so it was with Gratian's treatment of the vows of married women. A wife, he held, might make such vows as she pleased, so long as her husband consented to them; but should he withdraw that consent, then the wife was obliged to conform to his decision and might not fulfill what she had vowed. To this general rule, Gratian admitted one significant exception: in matters relating to sexual intercourse the rights of the two parties were equal. Either might allow the other to make a vow of continence or abstinence and neither might licitly make such a vow without the consent of the other. Once such a vow was made, however, the consenting party might not subsequently withdraw consent and demand a return to conjugal relations (17).

(12) C. 27 q. 2 c. 1 *Matrimonium* = Ivo, *Decretum* 8. 233 (PL 161. 634) and also C. 27 q. 2 c. 4 *Omnis res (palea)*; but see especially for Gratian's views C. 27 q. 2 d. a. c. 1 and d. p. c. 2.

(13) C. 27 q. 2 d. p. c. 18 and c. 19 *Sunt qui dicunt* = Ivo, *Decretum* 8. 129 (PL 161. 612) = *Panormia* 6. 78 (PL 161. 1259).

(14) C. 27 q. 2 c. 21 *Agathosa* = Ivo, *Decretum* 8. 186 (PL 161. 623) = *Panormia* 6. 84 (PL 161. 1261-1262); C. 27 q. 2 c. 22 *Si quis coniugatus* = Ivo, *Decretum* 8. 183 (PL 161. 622) = *Panormia* 6. 85 (PL 161. 1262).

(15) C. 27 q. 3 c. 24 *Si tu abstines* = Ivo, *Decretum* 8. 130 (PL 161. 612) = *Panormia* 6. 79 (PL 161. 1259-1260); C. 33 q. 5 c. 1 *Si dicat uir* = Ivo, *Decretum* 9. 127 (PL 161. 690), c. 2 *Notificasti* = Ivo, *Decretum* 8. 220 (PL 161. 630) = *Panormia* 6. 85 (PL 161. 1262); c. 6 *Una sola* = Ivo, *Decretum* 8. 134 (PL 161. 613); as well as d. a. c. 1 and d. p. c. 11.

(16) *Dig.* 1. 5. 9.

(17) C. 33 q. 5 c. 3 *Mulier* = Ivo, *Decretum* 8. 185 (PL 161. 622); c. 4 *Quod Deo* = Ivo, *Decretum* 8. 136 (PL 161. 614) = *Panormia* 6. 80 (PL 161. 1260); c. 11 *Manifestum* = Ivo,

Although Gratian nowhere explicitly treated the crusade vow — as he nowhere treated any other aspects of the crusade explicitly — the significance of his discussion of the vows of married persons is obvious in its implications for the crusade vows of married men. A married man must first seek his wife's consent in order to make a lawful crusade vow, since this vow would, in effect, deprive her for an extended time of her marital rights. It may be questioned, however, if Gratian would have held that a crusader, whose wife first consented to his crusade scheme and subsequently withdrew her consent, could legitimately proceed with his crusade project. In these circumstances Gratian might well have treated the crusade vow somewhat differently than he treated the vow of continence.

These implications of Gratian's teaching were commented upon by several writers among the decretists of the late twelfth century. Joannes Faventinus, writing in his *Summa* ca. 1171, noted that the vow to visit the Holy Sepulchre or to make any other pilgrimage implicitly carried with it a vow to observe continence during the journey, even though the obligation to continence might not have been expressly formulated when the pilgrimage vow was made (18). In the *Summa Reginensis*, written about twenty years after the *Summa* of Joannes Faventinus, this point is reiterated and, in addition, it is suggested that if the husband should die while on his journey, his wife ought to observe continence for so long as it would have taken her husband to complete his pilgrimage had he lived (19). Thus these

Decretum 8. 98 (PL 161. 604) = *Panormia* 7. 48 (PL 161. 1292); and especially *d. p. c.* 11 and *d. p. c.* 20. However it may be significant, so far as actual practice in this type of situation is concerned, that the *Summa* of Walter of Strassburg contains a form letter for the commutation of the pilgrimage vow of a woman who had taken the vow with her husband's permission and whose husband subsequently refused to allow her to fulfill the vow: Vat. lat. 2663, fol. 242r.

(18) Joannes Faventinus, *Summa* to C. 33 q. 5 in London, British Museum, MS. Add. 18, 369, fol. 150vb - 151ra: *Item votum continentie aliud est expressum et precisum, aliud uoto alio annexum, ut cum quis uouet uisitare sepulcrum uel ire ad sanctum iacobum et huiusmodi, licet expresse hic non uoueat continentiam, implicite tamen profitetur dum id pollicetur sine continentia non adimpletur.* On Joannes Faventinus, see J. F. VON SCHULTE, *Geschichte der Quellen und der Literatur des canonischen Rechts*, 3 vols. (Stuttgart, 1875-1880; r. p. Graz, 1956) 1. 137-140; STEPHAN KUTTNER, *Repertorium der Kanonistik* (Città del Vaticano, 1937; *Studi e Testi*, 71) pp. 143-146; A. M. STICKLER, *Jean de Faenza* in: *Dictionnaire de droit canonique*, 7 vols. (Paris, 1935-1965; hereafter cited as *DDC*) 6. 99-102.

(19) *Summa Reginensis* to C. 33 q. 5, in Vat. Reg. lat. 1061, fol. 43vb: *Idem est si dedit ei licentiam peregrinandi, et antequam impleatur peregrinatio ille decesserit. Melius tamen uidetur quod tanto tempore debeat continere quanto tempore poterat compleri peregrinatio, ut in*

two decretist commentaries bring the pilgrimage vow (of which the crusade vow is a variant type) into close relationship with the vow of continence with its various canonistic implications.

Bernardus Papiensis, who also wrote at the end of the twelfth century, raised the additional question of the obligations flowing from a premarital pilgrimage vow: does such a vow still bind after marriage, if the spouse should oppose its execution? In Bernard's view it would not, unless the spouse had been warned of the existence of the vow at the time of betrothal and had assented (even silently) to it at that time (20).

The status of the crusader's wife came in for special consideration and substantial alteration in two important decretals of Pope Innocent III. The earlier of them, *Quod super his*, which may be dated in the period August-October, 1200, sets forth the principle that women who wish to accompany their husbands to the Holy Land may be allowed to do so, although in general women who had vowed to go on crusade were encouraged to redeem their vows by a payment in aid of the Holy Land rather than to fulfill them in person (21). The obvious point of this provision was to preserve the marital rights of women whose husbands had enlisted in the ranks of the crusade by granting them exemption from the general norms governing the participation of women in crusading expeditions. In addition, *Quod super his* must have had the effect of making it easier for husbands to assume the cross, since if their wives refused assent the husbands could hold out the inducement of accompanying them on the crusade rather than remaining alone at home.

A second decretal, of far greater importance for the status of the crusader's wife, was *Ex multa*, which may be dated to September, 1201. In this decretal which, like *Quod super his*, was addressed to the Archbishop of Canterbury, the pope repeated his earlier assurance that wives of crusaders might, if they wished, accompany their husbands to the Holy Land. In addition, however, Innocent laid down

lege dicitur de statuliberis, cum habes servire [Dig. 40. 7. 2]. On the *Summa Reginensis*, see KUTTNER, *Repertorium* pp. 160-166.

(20) Bernardus Papiensis, *Summa de matrimonio*, ed. E. A. T. LASPEYRES in an appendix to his edition of Bernard's *Summa decretalium* (Regensburg, 1860; r. p. Graz, 1956) p. 228. On Bernardus and his work, see SCHULTE, *Geschichte der Quellen* 1. 175-182; G. LE BRAS, *Bernard de Pavie* in: *DDC* 2. 782-789.

(21) *Comp. III* 3. 26. 4 = *X* 3. 34. 8 (POTTHAST 1137).

a new provision in this decretal which radically altered the existing law: men might freely make and fulfill the crusade vow, he provided, even should their wives not give their assent to the proposal. Crusaders' wives, the pope added, were to be diligently persuaded to give their consent to their husbands' crusade plans (22).

These provisions, especially the provision of *Ex multa* which allowed husbands to make crusade vows without the consent of their wives, marked a decided break with the existing matrimonial discipline of the Church. Although the prolonged absence of a husband on crusade might not imperil his marriage, at least from a juridical point of view (23), the parity of husband and wife with respect to their mutual rights to sexual relations was seriously imperiled by the new legislation (24). Clearly the rationale underlying the provisions of *Ex multa* was that the urgent needs of papal policy required extraordinary measures to secure maximum assistance for the preservation of Christian control of the Holy Land. Yet in order to secure this end, the papacy found it necessary to permit husbands to contravene what earlier canonists had normally assumed was a natural right of married women, arising out of the very nature of the marriage contract itself. Although none of them denied its validity as law, nevertheless the decretalist commentators appeared to be uncomfortable in dealing with this provision of *Ex multa*, as is evidenced by their chary handling of it.

In the *Apparatus* written between 1210 and 1215 and attributed to Laurentius Hispanus, the author gingerly explained that *Ex multa*'s provisions were a special concession in favor of the Holy Land. He then raised another point: did this provision of *Ex multa* concerning the right of husbands to make the crusade vow without the consent

(22) *Comp. III* 3. 26. 5 = *X* 3. 34. 9 (POTTHAST 1469); cf. also Innocent III, *Registrum* 16. 108 in *PL* 216. 904-905.

(23) *X* 4. 1. 19. This decretal does not contradict *X* 4. 17. 8, as contended by EMILE BRIDREY, *La Condition juridique des croisés et le privilège de croix* (Paris, 1900) pp. 83-84. In the latter case, which involves the legitimacy of the children produced by the second marriage of a woman whose first husband had gone to Constantinople and had there disappeared for more than ten years, the point at issue is not the validity of the second marriage, but the legitimacy of the children. Cf. the *Glos. Ord.* to *X* 4. 17. 8 *ad v.* "promulgavit": *Sed utrum episcopus bene vel male processerit non quaerebatur, sed tantum utrum filij nati de alio viro, cum quo auctoritate episcopi contraxit, legitimi essent, et responderetur quod sic...* (The *Glossa Ordinaria*, here and subsequently, is quoted from the Venice, 1600, edition).

(24) Cf. NOONAN, *Contraception*, p. 283.

of their wives elevate the crusade vow to a dignity superior to the vow of continence, inasmuch as there was no such special concession with respect to that vow? (25). Vincentius Hispanus, also writing before 1215, was of much the same mind. Noting that the provisions of *Ex multa* contradict the positions set forth in the *Decretum* of Gratian, Vincentius could only fall back on the theory that *Ex multa* prescribed a most extraordinary (*specialissimum*) privilege designed to aid the Holy Land. Vincentius, too, noted the implication that the privileged position accorded by *Ex multa* seemed to elevate the crusade vow to a dignity superior to that accorded to the vow of continence. Although he apparently found this position unpalatable, Vincentius made the best of it by adding that this decretal also authorized the pope to dispense from the vow of continence (26). A very similar position was taken by Joannes Teutonicus, save that in his opinion the special privilege granted to married men taking the crusade vow should not be interpreted as prejudicial to the dignity of the vow of continence (27).

(25) *Apparatus* to *Comp. III* 3. 26. 5, *ad v. "uxorum"*, in Paris, Bibliothèque Nationale, ms. lat. 3932, fol. 169va: *Contra xxvii q. ii scripsit* [c. 26]; *contra xxxiii q. v quod Deo* [c. 4]; *sed hoc dic speciale in favorem terre sancte, et satis colligitur hic. Hic votum esset maius uoto continentie, cum propter continentiam non liceret hoc, ut capitulis precedentis et xxxiii q. v c. i et xxvii q. ii si causa abstines* [recte: C. 33 q. 4 c. 4]. On this apparatus see SCHULTE, *Geschichte der Quellen* I. 190-191; KUTTNER, *Repertorium* p. 356; A. M. STICKLER, *Laurent d'Espagne* in: *DDC* 6. 361-364; GAINES POST, *The So-called Laurentius-Apparatus to the Decretals of Innocent III in Compilatio III* in: *The Jurist* 2 (1942) 5-31; KURT NÖRR, *Der Apparat des Laurentius zur Compilatio III* in: *Traditio* 17 (1961) 542-543.

(26) Vincentius, *Apparatus* to *Comp. III* 3. 26. 5 *ad v. "Uxorum"* in Vat. lat. 1378 fol. 75vb: *S. xvii q. ij Scripsit* [c. 26] *contra*; *Agathosa* [C. 27 q. 2 c. 21]; *S. xxxiiij q. v c. i et c. quod deo* [c. 4] *contra*; *S. de conuersione coniugatorum per totum* [*Comp. III* 3. 25] *contra*. *Solutio: illud ut hic dicitur est specialissimum in fauorem terre sancte, et est expressum, ar. aliquid uotum esse magis uoto continentie cum hoc propter continentiam non liceret, ut in predictis contrariis; de uoto scripture contra l. ii* [*Comp. II* 3. 21. 2]; *et est hic ar. quod potest papa dispensare in uoto continencie*. On Vincentius and his *Apparatus* see SCHULTE, *Geschichte der Quellen* I. 191-193; KUTTNER, *Repertorium* pp. 356-357, and *Notes on Manuscripts* in: *Traditio* 17 (1961) 537-541; GAINES POST, *Blessed Lady Spain — Vincentius Hispanus and Spanish National Imperialism in the Thirteenth Century* in: *Speculum* 29 (1954) 198-209, of which a revised version appears in his *Studies in Medieval Legal Thought: Public Law and the State, 1100-1322* (Princeton, 1964) pp. 482-493; R. CHABANNE, *Vincent d'Espagne* in: *DDC* 7. 1507-1508.

(27) Gloss to *Comp. III* 3. 26.5 *ad v. "Uxorum"* in München, Bayerische Staatsbibliothek, Clm. 3879, fol. 229vb = *Glos. Ord. to X* 3. 34. 9 *ad v. "Uxorum"*: *Specialissimus casus est iste, quod uir possit facere uotum sine licentia uxoris, contra illa iura xxxiii q. v quod deo*

The comments of Laurentius, Vincentius, and Joannes marked out the main lines of subsequent decretalist commentary on the provisions of *Ex multa* and *Quod super his* as they related to the canonistic position of the crusader's wife. For the most part, later medieval decretalists contented themselves with slight variations on the same basic themes, without any significant efforts to pursue the matter further (28). Notable among the few new themes which emerged in later decretalist discussions of this matter is the comparatively obvious deduction that the notion of parity between the position of husband and wife with regard to the crusade vow might be maintained — and the disparity between the provisions of *Ex multa* and the general law on the subject of vows might accordingly be reduced — if the decretal *Ex multa* were interpreted to mean that wives as well as husbands might make the crusade vow without consent of their spouses. This idea was apparently first introduced by the anonymous author of the thirteenth century *Notabilia* "*Aliter debet*" (29). This interpretation was discussed at greater length by Hostiensis in his *Summa aurea*, which was finished ca. 1253. Hostiensis conceded the usefulness of interpreting *Ex multa* in this way, so as to preserve

[c. 4], xxvii q. ii si tu [c. 4], et per hoc uidetur quod aliqua uotum sit maius uoto continentie nam propter continentiam non licet fieri hoc, ut xxxiii q. v c. i, licet in uoto abstinence secus dicam, dum tamen per tale uotum neutri fiat preiudicium, ut xxxiii q. iiii [sic!] noluit [recte: C. 33 q. 5 c. 16]. Jo." On Joannes see especially SCHULTE, *Geschichte der Quellen* 1. 172-175, and S. STELLING-MICHAUD, *Jean le Teutonique* in: *DDC* 6. 120-122.

(28) Among the decretalists who comment on these decretals — sometimes at length — without adding anything of substance I have consulted particularly Robert of Flamborough, *Penitential*, lib. 2, tit. *De simplici voto*, in Cambridge, Corpus Christi College, MS. 441, pp. 42-44; Guido, *Casus* "*Scribit dominus papa*" in Oxford, Bodleian Library, MS. Laud. Misc. 646, fol. 43rb-va; Raymond de Peñafort, *Summa de penitentia* 1. 8. 7-8 (Verona, 1744) pp. 64-66; *Summa* "*Quid sit symonia*" in Innsbruck, Universitätsbibliothek, MS. 368, fol. 6vb-7rb; Damasus, *Questiones*, in Vat. Borgh. lat. 261, fol. 38rb; Bartholomeus Brixiensis, *Questiones dominicales* in Lambeth Palace Library, MS. 39, fol. 42rb-vb (also in British Museum, MS. Arundel 435, fol. 231vb-232ra); *Notabilia* "*Potius videndum est*" in Vat. Borgh. lat. 261, fol. 116vb; Innocent IV, *Apparatus* to X 3. 34. 8, 9 (Frankfurt a-M, 1570) fol. 429rb-431rb; *Notabilia* "*Clericus apud civilem*" in Sidney Sussex College, Cambridge, MS. 101, fol. 233ra; William of Pagula, *Summa summarum* 3. 38, in Cambridge, Pembroke College, MS. 201, fol. 167va; Joannes Andreae, *Novella commentaria in libros Decretalium*, 4 vols. (Venezia, 1581; r. p. Torino, 1963) 4. fol. 169v, 173v-174r; Panormitanus, *Commentaria* to X 3. 34. 8-9, 7 vols. in 3 (Venezia, 1571) 6. fol. 223v-224r.

(29) *Notabilia* "*Aliter debet*" to X 3. 34. 9 in Gonville and Caius College, Cambridge, MS. 23/12, fol. 41rb: *Non sequitur quod votum ultramarinum sit maius continencia quia uxor ipsum potest emittere invito viro et econtra.*

the parity of husband and wife with regard to vows, but he also distinguished further between those married women who ought to be allowed to fulfill a crusade vow, whether taken with the consent of their husbands or not. His distinction was based upon two factors: the age and reputation of the woman and her financial situation. Elderly women of good character, who were wealthy and who could accordingly bring large numbers of warriors with them to the Holy Land should by all means be encouraged to fulfill their crusade vows in person, he held, even if their husbands did not wish to accompany them. Young women, or those of more doubtful reputation, posed a different problem: they should be discouraged from fulfilling crusade vows in person under any circumstances and should rather be urged to redeem them with money subsidies in aid of the Holy Land (30).

A very different approach to the question of the status of the wife of a crusader was taken by St. Thomas Aquinas. In a quodlibetal disputation during the Easter term of 1271, St. Thomas discussed the problem "Whether a man may take the cross against his wife's wishes if he has reason to fear that she may be unchaste". To this question St. Thomas replied negatively on grounds which would have sounded familiar to Ivo of Chartres nearly two centuries earlier. A married man's first obligation, St. Thomas argued, is to care for the well-being of his wife, and this basic duty, which is intrinsic to the married state, should not be scanted in order to undertake further

(30) Hostiensis, *Summa aurea*, lib. 3 tit. *De voto* (Lyons, 1537; r. p. Aalen, 1962) fol. 177r: *Nunquid ergo et uxor potest Hierosolymitanum votum viro invito emittere? De hoc nihil dicitur expresse, et videtur quod sic, quia non ad imparia iudicantur... Quid enim dices, si sit nobilis mulier habens magnum comitatum, nec viro suo in dotem datum, quam multi bellatores sequentur? Certe necessitati terrae sanctae subveniendum erit et tunc ea ratio videtur, quae in viro est... Si enim vult ire sine viro, suspecta est mihi, quia fragilis est et sic dicit Ovidius: "Casta est quam nemo rogavit". Subtrahenda est ergo vagandi materia et timendum, ne angelus se transformet, sicut dictum est de monacho... Puto, quod votum potest emittere, etiam viro invito. Utrum autem ipsum possit exequi, eo invito, distinguendum videtur utrum suspecta sit et infamata, vel nimis iuvenis, in quo casu personaliter non exequetur et sic intellige iura inducta... Si vero sit vetus, quae multum profecit in diebus suis et matrona bonae famae, vadat, nec votum redimat, si secum multos possit ducere bellatores. Hostiensis repeats much the same argument in his *Lectura* to X 3. 34. 9 (Venezia, 1581; r. p. Torino, 1965) fol. 129r-v. On Hostiensis see especially SCHULTE, *Geschichte der Quellen* 2. 123-130; C. LEFEBVRE, *Hostiensis* in: *DDC* 5. 1211-1227; and the three important biographical articles by the late NOËL DIDIER, *Henri de Suse, prieur d'Antibes, prévôt de Grasse* (1235?-1245) in: *Studia Gratiana* 2 (1953) 595-618; *Henri de Suse en Angleterre* (1236-1244) in: *Studi in onore di Vincenzo Arangio-Ruiz*, 4 vols. (Napoli, 1953) 2. 333-351, *Henri de Suse, évêque de Sisteron* (1244-1250) in: *Revue historique de droit français et étranger*, 4th ser., 31 (1953) 244-270, 409-429.*

obligations which are not required of him. Accordingly, a man has no business taking the cross if his wife will not or cannot accompany him and if he has reason to fear that she will not remain chaste during his absence. He may legitimately undertake the crusade, however, if his wife will voluntarily agree to remain chaste, or if she wishes and is able to accompany him on his expedition (31). This was not an opinion, however, which found much favor with the decretalists of the fourteenth and fifteenth centuries. By and large the late medieval decretalists contented themselves with repeating the opinions of their predecessors on this particular point.

To bring the development of doctrine round in full circle, however, it may finally be mentioned that Ubaldo Giralaldi, an eighteenth century commentator, noting that crusades were no longer much in fashion, denied the force of the precedents set by *Quod super his* and *Ex multa*. Instead, he urged the applicability in his day of the pre-Innocentian discipline with regard to the pilgrimage vows of married persons (32).

(31) Thomas Aquinas, *Quodlibetum* 4. 11, in *Opera omnia*, 25 vols. (Parma, 1852-1873 r. p. New York, 1948-1949) 9. 513: *Respondeo dicendum, quod ea quae sunt necessitatis, non sunt praetermittenda propter ea quae sunt propriae voluntatis; unde etiam Dominus, Matth. 15, reprehendit Phariseos, qui docebant praetermittere mandatum de honoratione parentum, ut aliquae voluntariae oblationes Deo offerentur. Ex necessitate autem viro imminet ut gerat curam uxoris, quia "caput mulieris est vir" ut dicitur 1 ad Corinth. 11. 3: Sed quod accipiat crucem ad transfretandum, subjacet propriae voluntati. Unde si uxor est talis quae sequi non possit propter aliquod legitimum impedimentum, et de ejus incontinentia timeatur, non est ei consulendum ut accipiat crucem, et dimittat uxorem. Secus autem est, si uxor continere voluntarie proponat vel velit, et possit sequi virum suum.* It should be added, however, that the position reflected in this quodlibetal disputation reflects a development of St. Thomas' own thought on this problem. In the earliest of his major works, the *Commentarium in quattuor libros Sententiarum Petri Lombardi* (written ca. 1254-1257), St. Thomas took the more conventional view, admitting the right of a husband to take the crusade vow without his wife's consent *pro subveniundo necessitati Ecclesiae generalis*. At that time he doubted whether the wife, by the same token, had the right to take the crusade vow without the consent of her husband: 4 *In sent.* 32. 1. 4 ad 1 in *Opera omnia* 7-2. 965 [I am grateful to Professor John T. Noonan, Jr., for calling this development in St. Thomas' thought to my attention]. St. Thomas' mature opinion as reflected in his quodlibetal disputation was accepted as an appropriate solution to this question by Albericus de Rosate (d. 1354) in his *Dictionarium iuris tam civilis quam canonici* (Venezia, 1581) s. v. *Votum*. Otherwise the later canonists seem to have ignored the Angelic Doctor's arguments.

(32) UBALDO GIRALDI, *Expositio juris pontificii juxta recentiore ecclesiae disciplinam* 1. 3. 34. 550, nova romana editio (Roma, 1829) p. 359: *Verum cum hodie huiusmodi expeditiones in Terram Sanctam sublatae sint, transcriptae decretales quoad hoc votum ad praxim nihil faciunt, nec amplius in iis disposita locum habent, potissimum quoad divortium, etiam sine consensu uxorum, indultum viris in secunda Decretali § In tanta ut solvere possint hos peregrinationis votum.*

* * *

The cycle of development summarized here is not without some interest for the larger question of the theories of the marriage bond and marital rights held by the medieval canonists. These theories, as has been noted, followed a relatively consistent line of development up to the pontificate of Innocent III. The canonists of the late eleventh and twelfth centuries were generally agreed that marriage involved a contractual relationship in which the mutual consent of the partners was the crucial factor in creating a marital union. From this contractual agreement resulted a number of mutual obligations, one of which was the obligation of the marriage debt, which bound each partner to accede to the other's desire for conjugal relations. Although the partners to a marriage might subsequently agree to limit or abrogate this particular right, such an agreement required mutual consent and neither partner could by unilateral action nullify the other's rights to legitimate sexual intercourse.

At the beginning of the thirteenth century, Pope Innocent III disrupted the harmonious development of this theory by introducing an anomalous situation: in order to further the interests of papal policy in the Holy Land, he decreed that husbands, even without their wives' consent, might make and fulfill crusade vows, which in effect would deprive their wives of the right to fulfillment of the marriage debt. This precedent might easily have been construed to mean that in the interests of other ecclesiastical policies the conjugal rights of married persons might be limited or denied, as they were in this particular instance (33). What is especially interesting is the reaction of the canonists and subsequent popes to this precedent. That reaction was conservative. The canonists in their interpretation of Innocent's decretals regarding the crusade vow were particularly careful to limit the exception to this one case alone. There was no attempt to enlarge its scope, to apply it to other situations or, for

(33) Possibly as a partial compensation for this deprivation and possibly also to make women more amenable to granting their consent, the popes from the mid-thirteenth century commonly granted the crusade indulgence to crusaders' wives: Innocent IV, *Registres* 2665, 5980, ed. ELIE BERGER, 4 vols. (Paris, 1884-1921; *Bibliothèque des Ecoles françaises d'Athènes et de Rome*, 2d ser., 1); Nicholas IV, *Registres* 1941, ed. ERNEST LANGLOIS, 2 vols. (Paris, 1886-1893; *Bibliothèque des Ecoles françaises d'Athènes et de Rome*, 2d ser., 5); cf. NIKOLAUS PAULUS, *Geschichte des Ablasses im Mittelalter vom Ursprunge bis zur Mitte des 14. Jahrhunderts*, 3 vols, (Paderborn, 1922-1923) 2. 41-42.

example, to other types of vows, not even to the vow of continence, which represented a supremely good and important value from the viewpoint of the canonists.

By way of contrast, a suggestive example of the means by which canonistic interpretation might work to extend the scope of a canonical doctrine could be developed with respect to the canonists' views of the possibility of papal dispensation from the vow of continence, but space limitations forbid the elaboration of that discussion here. What is significant, I repeat, is the conservative character of the canonists' reaction to *Ex multa*. This conservative reaction reached the point where, with St. Thomas, we have a virtual nullification of the privilege granted by *Ex multa* on the grounds that while the making of a crusade vow by a husband without his wife's consent might be legally permissible, it was nonetheless morally reprehensible, insofar as it might create an insoluble moral dilemma for his wife. This amounted to a repudiation on moral grounds of a legal position established by papal legislation and presents an instructive example of a conflict between legal rights and moral responsibility in the middle ages (34).

(34) BRIDREY, *La Condition juridique des croisés*, pp. 81-83, points out another limitation of the privilege conferred by *Ex multa*: wives could still in many cases hinder or even block completely the implementation of crusade proposals by refusing their consent to the alienation of lands and other financial arrangements which might be required for the success of the proposed expeditions.

XVI

THE CRUSADER'S WIFE REVISITED

SUMMARY: The canonical status of the wife of a crusader presented medieval canonists with numerous problems, some of which were examined in an earlier paper. The present paper deals with the problems of marital status created by the disappearance of a husband who left on crusade and failed to return. These problems became more acute during the crusading epoch than they had earlier been, because of the large numbers of persons involved, the great distances covered by crusading armies, and the complexity of tracing the whereabouts of a person who disappeared in Saracen-held territory. Gratian and the earlier decretists insisted that proof of death must be produced before the wife of a missing man might be allowed to remarry. Tancredus reports a gloss of Laurentius, who held that a reasonable presumption of death was sufficient to allow remarriage. His attitude was shared by and clarified by the authors of *Glossa Ordinaria* to the *Decretum* and the *Decretals* of Gregory IX, as well as by Hostiensis. Panormitanus, after examining various alternatives, argued for a return to more stringent standards of proof of presumed death. Both the position of Panormitanus and also that of Laurentius and his followers seem to be reflected by modern writers on the presumption of death in marriage cases.

SUMMARIUM: Status in iure canonico uxoris cruce signati canonistis mediae aetatis multas praebuit difficultates, quarum nonnullae in scripto priore tractatae sunt. In scripto hoc agitur de difficultatibus quas patitur status matrimonialis uxorū cruce signatorum qui discesserunt et nunquam redierunt. Hae difficultates graviores fiebant aetate cruce signatorum quam antea tum propter multitudinem hominum qui interfuerunt, tum propter longinquitatem terrae sanctae, tum propter implicationes eruendi ubi essent qui in terris Saracenorum defecerunt. Gratianus atque decretistae priores postulaverunt probationem mortis antequam liceret uxori viri absentis ad novas nuptias convolare. Tancredus autem refert glossam Laurentii, qui existimavit ad hoc verisimilem praesumptionem sufficere. Doctrinam Laurentii receperunt et illustrarunt auctores *Glossarum Ordinariarum* ad *Decretum* atque ad *Decretales* Gregorii IX, itemque Hostiensis. At Panormitanus, inspectis nonnullis optionibus, existimavit normas certiores probationis mortis restaurandas esse. Doctrina tam Laurentii quam Panormitani eorumque asseclarum repeti videntur apud auctores hodiernos de praesumptione mortis in causis matrimonialibus agentes [J.A.B.].

* * *

In an earlier article it was shown that the situation of the wife of a crusader presented certain difficulties for medieval canonists with respect to her rights, if she had any, to forbid her husband to abandon her in order that he might fulfill the obligations in-

curred by his crusading vow (1). A further area of difficulty, from the canonists' viewpoint, was posed by the plight of women whose husbands had gone on crusade and had failed to return when expected. What was the marital status of a wife in this situation? How long must she await her husband's reappearance before she could remarry? What kinds of proof must the presumptive widow furnish before remarriage might be allowed? Could the wife of a crusader who had fallen into Saracen captivity be allowed to remarry when there was no realistic prospect that her husband would ever return to her? What of the remarriage of a woman whose husband was missing and presumed dead, if the first husband were subsequently to turn up alive?

These were painfully concrete questions which the medieval canonists faced. In answering them, the canonists sought solutions which would do two things: they must preserve a basic belief in the indissolubility of a valid marriage during the lifetime of the married couple and they must at the same time accommodate the needs and desires of women caught in desperately unhappy situations. It is obvious that questions of this sort were neither new nor peculiar to the situation created by the crusading expeditions of the middle ages. Problems of this kind will almost inevitably arise in connection with military expeditions of any kind and at any time. The continuing series of crusading expeditions during the twelfth and thirteenth centuries, however, brought these problems up in a more acute form than previous generations had known. In part this was a result of the unprecedented size of the great crusade expeditions: the sheer numbers of persons involved made the problems more severe than ever before. In part, too, the increased complexity of the problems faced by the wives of crusaders was a result of the length of the expeditions' journeys: never before had Europeans in such numbers journeyed such great distances to fight such an enemy as the one which faced the crusades. The distance involved and the irregularity of communications through enormous regions controlled by hostile forces created problems of previously unknown intensity and complexity for the Western Church.

(1) *The Crusader's Wife: A Canonistic Quandary*, in: *Studia Gratiana* XII, *Collectanea Stephan Kuttner* II, 1967, pp. 425-441.

* * *

In dealing with the problem of a woman whose husband had disappeared on crusade and who now wished to remarry, the canonists of the twelfth century could begin with certain principles which had already been well established in the Church's law and theology before the first crusade. Provided that it were certainly known whether the missing husband were alive or dead, the answer to the question of his wife's remarriage was, in principle, relatively simple. If her first husband were definitely known to be alive, the woman was still married to him (provided, of course, that their marriage had been valid in the first place) and she had no right to seek remarriage so long as her first husband continued to live, no matter how many years or decades he remained away from her (2).

If her husband were known to be alive and in captivity, the wife had the pleasant choice of remaining at home, without her husband, until he might be released, or of joining him in captivity (3). If, on the other hand, it were definitely known that her husband had perished and if adequate proof of his death could be furnished, the wife could remarry, if she chose to do so, after a year's time (4). But when there was uncertainty, when it was not clearly known whether her husband were alive or dead, then the wife's troubles began in earnest.

Gratian in his *Decretum* faced these problems squarely: In *Causa* 34 he posed this situation:

A certain man has been made captive. Later his wife heard that he had died and she married another man. Subsequently the first man returned from captivity and demanded back his wife. Bound by love for her later husband, she spurned the bed of her earlier mate (5).

What is to be done, Gratian asks — is the woman guilty of

(2) Thus, e.g., Burchard of Worms, *Decreta* 9.56 (PL 140.824) = Ivo of Chartres, *Panormia* 6.86 (PL 161.1263); 6.87 (PL 161.1263) = Ivo, *Decretum* 8.244 (PL 161.637-638); *Panormia* 6.88 (PL 161.1263-1264) etc.

(3) Ivo, *Panormia* 6.91 (PL 161.1264).

(4) Ivo, *Panormia* 6.59, 68-70 (PL 161.1255, 1257-1258).

(5) *Quidam vir in captivitatem ductus est: postea uxor eius audiens illum mortuum, nupsit alii; demum ille de captivitate rediens repetit uxorem suam; illa posterioris amore capta, aspernatur thorum prioris viri.*

adultery for remarrying while her first husband still lived? Must she now leave her second husband and return to the first, since he has reappeared?

To these questions, (Gratian's) answers were reasonably clear and uncompromising. He cited much the same group of authorities as had been cited by earlier canonists and stood by the principles that the death of a first husband must be demonstrated before a wife can contract a second marriage; that if a second marriage should take place on the presumption of the death of the first husband, the wife is bound to return to her first husband when he reappears; and that the wife of a captive is bound either to join her husband in captivity or else to await his return without attempting remarriage (6).

The early decretists made no significant attempts to supplement or clarify Gratian's position on these matters; rather they contented themselves with summarizing and paraphrasing the points which he had made in C. 34 (7). A significant new position, however, appeared in the *Apparatus* of Tancredus (ca. 1185-1236), in the commentary on a decretal of Pope Lucius III (8). Resurrecting a Roman law rule, Tancredus quotes Laurentius Hispanus (d. 1248) to the effect that a woman who was uncertain of her husband's death must wait five years before remarrying. Furthermore Laurentius added that she should seek certification from her late husband's commander concerning his presumed death, but that if no such certification could be made, she might seek further definite information by inquiring in the area where he was last known alive, if that were possible. Otherwise, she might remarry (9). Clearly this gloss represented

(6) C. 34 q. 1 et 2 c. 1-4.

(7) Thus Paucapalea, *Summa* to C. 34, ed. J. F. VON SCHULTE (Giessen, 1890), pp. 134-135; Stephen of Tournai, *Summa* to C. 34, ed. J. F. VON SCHULTE (Giessen, 1891; r.p. Aalen, 1965), p. 247; *Summa Parisiensis* to C. 34, ed. T. P. McLAUGHLIN (Toronto 1952), p. 255; Rolandus, *Summa* to C. 34, ed. F. THANER (Innsbruck 1874), p. 200; Rufinus, *Summa*, ed. H. SINGER (Paderborn 1902; r.p. Aalen 1963), pp. 507-508.

(8) *Comp. I* 4.22.3 *Dominus ac* = *X* 4.21.2 (*JL* 15, 211).

(9) Tancredus, *Apparatus* to *Comp. I* 4.22.3, ad v. *vita*, in Cambridge, Gonville and Caius College, MS. 28-17, p. 107b: *Tunc enim constat ei de morte viri ex quo per quinquennium expectavit, ut ff. de divortiis, uxores* [Dig. 24.2.6]. *Sed contra C. de repudiis auth. hodie* [Auth. 8.13 post Cod. 5.17.7 = Nov. 117.11] *et infra de sponsalibus, in presentia* [*Comp. II* 4.1.3 = *X* 4.1.19 (*JL* 16, 370)]. *Sed quid faciet si nunc per magistrum militum ut ibidem dicitur certificari* (non) *poterit de morte uiri, sicut sepe accidit in magnis preliis et precipue sarraceno-*

a change in viewpoint from that hitherto common among the canonists and clearly, too, from Laurentius' comment that these situations arise especially from battles between Christians and Saracens, the experience of the Crusades played some part in bringing about this change (10). It is also noteworthy that Laurentius found the basis for his new position in the prescriptions of the Roman law concerning the remarriage of the wives of missing soldiers. The Roman law furnished three different rules concerning the remarriage of the wives of captives and missing soldiers when there was uncertainty about the death of the missing man. The earliest of these rules, enunciated by the second century jurist, Salvius Julianus, taught that the wives of missing men whose fate was uncertain might remarry at the end of a five year waiting period (11). A second rule, issued by Constantine in 337, directed that the wife of a missing soldier might remarry after he had been absent and no news had been heard of him for four years (12). A third rule, formulated under Justinian, required a waiting period of ten years before remarriage (13). (The great thirteenth century civilians, it should be noted, stood by yet another rule: so long as there was doubt concerning the death of the missing man, his wife must not remarry; but if the commander of the expedition in which he had served was willing to swear that the husband was dead, then the wife might remarry one year after the oath was

rum et christianorum ubi multi pereunt de quibus nichil nouerunt hii qui ducebant exercitum? Mittat ad uicinas ciuitates si possit; alias contrahat. la<urentius>.

(10) Laurentius, who was writing as early as the last decade of the twelfth century, may well have had in mind as he wrote the aftermath of the gigantic losses to Saladin in the Battle of Hittin (1187), where so many Christian prisoners were taken that the Syrian slave market was glutted for years thereafter. In addition, of course, the years between Hittin and the time of Laurentius' writing also witnessed the Third Crusade and possibly also the Fourth Crusade, while still other crusade ventures were in various stages of preparation during the period when Laurentius' gloss must have been composed. On Laurentius and his glosses, see KUTTNER, *Repertorium der Kanonistik* (Città del Vaticano 1937), pp. 326, 328; A. VAN HOVE, *Prolegomena ad Codicem iuris canonici*, 2d ed. (Malines-Roma 1945), p. 429; A. M. STICKLER, *Laurent d'Espagne*, in: *Dictionnaire de droit canonique* 6.361-364; G. LEBRAS, C. LEFEBVRE, and J. RAMBAUD, *L'age classique* (1140-1378) (Paris 1965), pp. 297-298; and especially A. M. STICKLER, *Il decretista Laurentius Hispanus*, in: *Studia Gratiana* 9 (1966), 463-549.

(11) *Dig.* 24.2.6; cf. *Nov.* 22.7 = *Auth.* 4. 1.

(12) *Cod.* 5.17.7.

(13) *Nov.* 22.14 = *Auth.* 4.1.

sworn (14)). Although Laurentius refers to the various Roman law rules in his gloss, he concludes by taking a position distinctly more permissive than those reflected in his sources.

Laurentius' position found scant support in the papal decretal legislation of the late twelfth and early thirteenth centuries. A decretal of Pope Clement III (1187-1191) directed that the petitions for permission to remarry initiated by women whose husbands had been missing for seven years and more were to be denied until proof was furnished of their husbands' deaths, no matter for how many years the husbands might have been missing (15). A similar position had earlier been taken by Pope Lucius III (1181-1185) (16).

The *Glossa Ordinaria* to the *Decretum* of Gratian and also to the *Decretals* of Gregory IX, however, assumed a more lenient attitude than did the late twelfth century pontiffs, an attitude more nearly akin to that of Laurentius. Although the glosses advised canonists that where there was doubt about the circumstances of a given case, the legal presumption stood in favor of the marriage bond (17), they also laid down the principle that the wife of a missing man might remarry when it could reasonably be presumed that the first husband had perished (18). Absolute proof was not demanded, they thought, but rather such circumstantial evidence as would make a presumption of death reasonably probable. The glossators seem implicitly to have taken the humane and reasonable position that it would be better to counten-

(14) *Auth.* 8.13 *post Cod.* 5.17.7 = *Nov.* 117.11. This is the rule which was approved by Accursius (d. ca. 1160) at the conclusion of his discussion of the various waiting periods: *Glos. Ord.* to *Cod.* 5.17.7 ad v. *violata*.

(15) *Comp.* II 4.1.3 = *X* 4.1.19 (*JL* 16, 370). E. BRIDREY, *La condition juridique des croisés et le privilège de la croix* (Paris 1900), pp. 83-84, is incorrect in his assertion that this decretal contradicted *X* 4.17.8; cf. *The Crusader's Wife: A Canonistic Quandary*, cit., p. 435, n. 23.

(16) *Comp.* I 4.22.3 = *X* 4.21.2 (*JL* 15, 211).

(17) *Glos. Ord.* to *X* 4.21.2 ad v. *Non deneget: Et ideo propter dubium presumitur pro matrimonio quod fieri debet...*

(18) *Glos. Ord.* to *X* 4.1.19 ad v. *viris: Ubi tamen veresimiliter presumitur de morte si mulier nubat excusatur; et viro reverso nisi sponte redeat ad virum statim, merito sunt notande de adulterio...* *Glos. Ord.* to *C.* 34 q. 1 et 2 d. a. c. 1 ad v. *utraqve vir: Si mulier credit suum maritum mortuum et habet iustam causam credendi, licite potest contrahere ... sed si audierit eum mortuum, licet per falsum rumorem, et tunc nupserit, vir non potest eam de tali adulterio accusare, nisi ipsa procurauerit illum rumorem.*

ance some innocent adultery, if a presumptively dead husband should unexpectedly turn out to be alive, than to impose an inflexible and often impossible burden — which one might assume would ordinarily lead to a great deal of not-so-innocent adultery — upon the wives of missing men (19). Certainly the presumption of death was not always an accurate presumption and the return of a missing husband — or of someone who pretended to be a missing husband — could cause great perplexities for pastors, canonists, and ecclesiastical judges, as one of Innocent III's decretals vividly demonstrates (20).

The principles governing cases of presumed death were further spelled out by Hostiensis, who taught that a reasonable presumption of the death of a first husband was all that should be required in order to make a second marriage possible and that such a presumption was established when it was generally believed that the first husband had perished. Although he observed that others disagreed with his position, Hostiensis concluded that his teaching was the truer one (21).

The position of Hostiensis on these questions was to become the normative teaching for the later medieval canonists, with the signal exception of Panormitanus (1386-1445), who on this point, at any rate, was considerably more strict than any other medieval canonist. A missing husband, he taught, cannot be presumed

(19) One curious and probably unworkable principle asserted by papal legislation and followed by the gloss held that when marriage took place following the presumed death of a first husband, the wife must submit to intercourse when her second husband demanded it, but she must not of her own volition seek *coitus* with her new husband. It would be curious, though vain, to speculate on how many troubled consciences this must have caused. See *Glos. Ord.* to X 4.1.19 ad v. *viris*; *Glos. Ord.* to C. 34 q. 1 et 2 d. a. c. 1 ad v. *utraque quaestio*; X 4.21.2; and cf. the remarks of JOHN T. NOONAN, Jr., *Contraception* (Cambridge, Mass. 1965), pp. 130-131, 284-286, on the development of the idea of the marital debt.

(20) CHRISTOPHER R. and MARY G. CHENEY, *A Draft Decretal of Pope Innocent III*, in: *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 41 (1961) 29-47.

(21) *Summa aurea* 4.5.6, tit. *de sponsa duorum* (Lyon 1537; r.p. Aalen 1962), fol. 203 ra: *Non ergo requiritur probatio, sed verisimilis presumptio... vel dic quod refert utrum presens velit matrimonium accusare et canonicum probare impedimentum et tunc sufficit verisimilis presumptio puta fama communis sine testibus, et sic loquitur proximus. § vel velit contrahere simpliciter contra matrimonium nihil opponens et tunc requiritur probatio certi nuncij coram episcopo facta ... sed quod prius dixi verius est, nam et unicus testis non probationem sed presumptionem inducit...* See also Hostiensis' discussion of the same issues in his *Lectura* to X 4.1.19 (Venezia 1581; r.p. Torino 1965) pt. 4, fol. 6.

to be dead until a term of one hundred years has passed (22). Short of this, Panormitanus, after examining the opinions of other canonists on the matter, would concede the possibility of verifying death by the testimony of witnesses, but he makes it plain that he entertained serious reservations about such proofs, unless they were clearly impeccable according to the highest standards of testimony (23).

* * *

The questions raised and the positions taken by the medieval canonists whose positions have been examined here are even now very much to the point for present-day canonists, since it appears that the modern canonists are not much more uniform in their positions on these matters than were their medieval forebears.

(22) Panormitanus, *Commentaria* to X 4. 1.19 in: *Omnia quae extant commentaria*, 9 vols. (Venezia, 1588) 7. fol. 13r: *Nota quod non praesumitur mortuus, licet habita diligenti inquisitione ignoretur ubi sit; nam praesumitur quis uiuere per centum annos, ut in l. fi. C. de sacrosanctis ecclesiis* [Cod. 1.2.23.2].

(23) *Ibid.*: *Sed quaeritur, nunquid hodie de iure canonico sit seruanda illa solennitas illius authenticae hodie* [Auth. 8.13 = Nov. 117.11], *vbi dicitur, quod si maritus dicatur mortuus in bello, debet uxor per se, vel alium adire ducem belli, et facere recipi dicta aliorum super hoc, et si deponunt de morte debet uxor expectare per annum, et postea contrahere; aliter enim contrahens potest puniri de adulterio, ut ibi. Tan., Phil., Goff. dicunt non esse necesse, sed satis est secundum eos, quod de morte mariti constet vere, vel veresimiliter, puta quia nauis in qua maritus extiterat passa est naufragium, et omnes dicuntur mortui. Idem sentit Vin., dicens, quod non solum per nuncium, sed etiam per litteras, vel alias probationes potest mulier certificari... sed Bart. ibi plenius materiam examinans, dicit requirendam probationem secundum quantitatem praeiudicii ... Est enim satis graue, quod uxor transeat ad alia vota in vita mariti, et sic vult, quod hodie debeat seruari solennitas illius authen. Sed Bart. in hoc ignorauit istum textum cum aperte hic dicatur, quod sufficiat certus nuncius, et sic unus testis, quando non agitur de magno praeiudicio, et etiam Doctores nostri communiter sentiunt oppositum eius, quod dicit Bart. ut supra dixi. Dicit tamen ipse, quod fama sufficit ad probandum mortem, vel vnicus testis, quando non agitur de magno praeiudicio ... sed quo ad materiam nostram nunquid fama sufficiat, distinguit D. Ant. quod est de longinquo, et tunc videtur sufficere, maxime cum longo tempore maritus fuit absens. Aut dicitur mortuus in vicinis partibus, et fama sola non sufficit, et quamquam haec opinio multum videatur aequa, tamen iudicio meo multum resistit iste text., dum requirit certum nuncium; et pondera verbum, certum, nam fama procedit ex auctore incerto et plerunque fallaci... Ac etiam in persona nuncii deberet considerari qualitas personae, et utrum deponat per verba verisimilia, nam agitur non de modico praeiudicio absentis, et in summa hanc materiam relinquerem arbitrio iudicantis, ut diligenter omnibus ponderatis consideret, utrum de morte sit facta certificatio.*

Although some official documents and standard commentaries on the modern canon law tend to embrace opinions on the matter of presumed death which are very reminiscent of the sentiments expressed by Panormitanus (24), a number of reported cases in recent years would seem to indicate that the quite different attitudes typified by the commentaries of Laurentius and Hostiensis are also still current in the Church (25).

(24) Thus, e.g., E. F. REGATILLO, *Institutiones iuris canonici*, 5th ed., 2 vols. (Santander 1956) 1.144-145; F. DELLA ROCCA, *Manual of Canon Law*, trans. A. THATCHER (Milwaukee 1959), pp. 275-276; *Dictionary of Moral Theology*, ed. F. CARDINAL ROBERTI et al., trans. H. J. YANNONE (London 1962) s.v. *Bond, Impediment of*, pp. 154-155, etc.

(25) R. A. SIEGELE, *A Presumption of Death Case*, in: *The Jurist* 19 (1959) 370-384; *Presumption of Death: Holy Office*, in: *The Jurist* 23 (1963) 115-116; E. F. REGATILLO, *Presunta muerte*, in: *Canon Law Abstracts* 1-4 (1958-59) 89; G. OESTERLE, *Morte presunta*, in: *Canon Law Abstracts* 10 (1962) 51; E. F. REGATILLO, *Mujer con dos maridos*, in: *Canon Law Abstracts* 12 (1963) 57. A French journalist, M. HENRI FESQUET, reports under date of 30 September 1965 that in Germany, at the end of World War II, it was agreed by both Church and state officials to accept a six year period of absence as establishing an adequate presumption of death for both civil and religious purposes: *The Drama of Vatican II*, trans. B. MURCHLAND (New York 1967), p. 641.

MARRIAGE LAW IN THE LATIN KINGDOM OF JERUSALEM

Every European society has created legal norms to regulate the formation and dissolution of marriage, and the Latin Kingdom of Jerusalem was no exception to this rule. Like other medieval Western societies, Outremer treated matrimony as both sacred and secular. Marriage in Outremer, as elsewhere, was controlled in part by the legal norms and courts of the church and in part by the customary law of the earthly kingdom. This paper will address the problems raised by the intersection of the two jurisdictions and will examine the impact of this situation upon the marriage law and institutions of the Latin Kingdom.

This subject is especially appropriate as a contribution to a volume in honor of Joshua Prawer, for it is a subject on which he himself has done much of the basic research.¹ Indeed Prawer is the preeminent modern pioneer in the study of the legal records of the Latin States and their social implications. In part this essay will retrace some of Prawer's work on the marriage law of the Latin East; but my approach differs from his, since I shall be looking at the texts from the vantage point of a historian of canon law. My aim is to compare and contrast the marriage law of Outremer with the marriage law of the canonists and to

1 Especially his "Etude préliminaire sur les sources et la composition du 'Livre des assises des bourgeois,'" *RHDFE* 4.32 (1954), 198-227, 358-383, and his "Etudes sur le droit des *Assises de Jérusalem*: droit de confiscation et droit d'exhérédation," *RHDFE* 4.39 (1961), 520-551 and 4.40 (1962), 29-42. [For updated versions of these studies see now his *Crusader Institutions*, pp. 358-411, 430-468. Ed.]

suggest some areas in which each may have influenced the development of the other.

The marriage law of the Latin Kingdom has been transmitted to us in a group of treatises that are sometimes referred to collectively as the *Assises de Jérusalem*. All of the surviving legal texts of Outremer date from the thirteenth century, save for one twelfth-century record of the *acta* of the Parlement of Nablus (1120), which was published by Mansi.² The main corpus of the Latin Kingdom's legal records was edited nearly 150 years ago by Count Beugnot in the *Recueil des Historiens des Croisades*.³ The principal legal treatises in this corpus are the *Assises de la cour des bourgeois* (ca. 1240), Jean d'Ibelin's *Assises de Jérusalem* (ca. 1260), and the book which bears the name of Philippe de Novare (also ca. 1260).⁴ Aside from the isolated record of the Parlement of Nablus, it is impossible to speak with any certainty about the law of Outremer in the twelfth century, because all of the other early legal records of the kingdom vanished when Jerusalem fell to Saladin's army in 1187.⁵

Since we know the law of Outremer only as it appears in mid-thirteenth century records, this study will concentrate on the canon law of the same period, that is the canonical sources included in the *Decretum* of Gratian (ca. 1140) as modified by the later rules and decisions incorporated in the *Liber Extra* of Pope Gregory IX (1234), together with the standard glosses and commentaries on those collections.⁶

The marriage law of the Latin Kingdom, according to Philippe de Novare, took shape only gradually following the conquest of Jerusalem by the army of the First Crusade in 1099. Philippe tells us further that women in Outremer

2 Mansi 21:262-264.

3 RHC Lois 1-2 (Paris, 1841-1843).

4 Prawer, "Etude préliminaire," p. 199; Jean Richard, "Le statut de la femme dans l'Orient Latin," *Recueils de la Société Jean Bodin* 12 (1962), 378.

5 Jonathan Riley-Smith, *The Feudal Nobility and the Kingdom of Jerusalem, 1174-1277* (London, 1973), pp. 121-144; also his "The Assise sur la ligèce and the Commune of Acre," *Traditio* 27 (1971), 185.

6 The texts of the canon law will be cited throughout from the standard edition of the *Corpus iuris canonici* by E. Friedberg, 2 vols. (Leipzig, 1879; repr. Graz, 1959), while the *glossa ordinaria* will be cited from the 4 vol. edition published at Venice in 1600. Texts of the *Corpus iuris civilis* will be cited from the critical edition by Paul Krueger, Theodor Mommsen, Rudolf Schoell, and Wilhelm Kroll, 3 vols. (Berlin, 1872-1895; numerous reprintings). On the state of the canon law by the mid-thirteenth century see A. Van Hove, *Prolegomena ad Codicem Iuris Canonici*, 2d ed. (Malines, 1945), pp. 337-348, 357-363; J.A. Clarence Smith, *Medieval Law Teachers and Writers, Civilian and Canonist* (Ottawa, 1975), pp. 19-20, 38-39; Gabriel Le Bras, Charles Lefebvre, and Jacqueline Rambaud-Buhot, *L'âge classique, 1140-1378: sources et théorie du droit*, vol. 7 of *Histoire du droit et des institutions de l'église en Occident* (Paris, 1965), pp. 17-50, 133-152.

were originally allowed to marry as they pleased. This caused such problems for the kings of Jerusalem, however, that they and their barons imposed limits upon freedom of marriage; the peculiar marriage law of the Latin Kingdom slowly began to take form.⁷ This may or may not be what actually happened. It is clear, however, that by the mid-thirteenth century the matrimonial law of Outremer made a basic distinction between the marriage law that applied to noble persons, especially noble women, and the marriage law that applied to the bourgeoisie.⁸ The legislative history of the Latin Kingdom is so poorly documented that the stages by which this distinction developed are, however, completely hidden from us.⁹ But Prawer's studies have demonstrated that the marriage law of the bourgeoisie borrowed heavily from the Roman civil law tradition, expounded in the Provençal paraphrase of the *Codex Justiniani* which is known as *Lo Codi*.¹⁰ This work, which may be dated to about 1149, was certainly one important vehicle for the transmission of Romano-canonical legal doctrine to the Latin East.¹¹ But the marriage law of the Western church also underwent major changes during the last half of the twelfth century and the first decades of the thirteenth century, and those changes, too, are reflected in part in the marriage law of the *Assises des bourgeois*, as well as in the marriage law sections of the treatises of Jean d'Ibelin, Jacques d'Ibelin, and Philippe de Novare.¹²

"A good marriage is very pleasing to God and highly profitable to man," declared the *Assises des bourgeois*.¹³ Since both God and man had a stake in marriage, both the courts of the church and the secular courts of the Latin Kingdom undertook to regulate it. To be sure, the *Assises des bourgeois* went on to assert that the ecclesiastical courts enjoyed primary competence in matrimonial affairs.¹⁴ Nonetheless, the attention devoted by the *Assises* to matri-

7 *Livre de Philippe de Navarre* 86, RHC Lois 1:558-559; Richard, "Statut de la femme," p. 379.

8 Richard, "Statut de la femme," pp. 380-381.

9 Prawer, "Etude sur le droit," p. 521.

10 Prawer, "Etude préliminaire," pp. 205-213.

11 The texts that I have used are *Lo Codi in der lateinischen Übersetzung des Ricardus Pisanus*, ed. Hermann Fitting (Halle, 1906; repr. Aalen, 1968) and *Lo Codi: eine Summa Codicis in provenzalischer Sprache aus dem XII. Jahrhundert*, ed. Felix Derrer (Zurich, 1974).

12 Charles Donahue, "The Policy of Alexander the Third's Consent Theory of Marriage," in *Proceedings of the Fourth International Congress of Medieval Canon Law*, ed. Stephan Kuttner, Monumenta iuris canonici, ser. C, vol. 5 (Vatican City, 1976), pp. 251-281; Georges Duby, *Medieval Marriage: Two Models from Twelfth-Century France* (Baltimore, 1978), pp. 15-22; Christopher N.L. Brooke, *Marriage in Christian History: An Inaugural Lecture* (Cambridge, 1978), pp. 17-34.

13 *Assises des bourgeois* 159, RHC Lois 2:108.

14 *Assises des bourgeois* 181, RHC Lois 2:121.

monial matters makes clear that secular courts were prepared to deal with marriage cases when the interests of secular society would be served.

The bourgeois *Assises*, following *Lo Codi*, explicitly accepted the basic Romano-canonical principle that consent is essential to marriage, and that marriage is contracted by the consent of the parties.¹⁵ This principle was modified, as we shall see, when the marriage of female holders of military fiefs was at issue.

Another basic tenet of canon law figures in the treatise of Jean d'Ibelin, the principle that within the marriage relationship equity demands that men and women be treated as equals.¹⁶ True, Jean d'Ibelin follows the canonists in limiting this equality to the sexual rights of the married parties.¹⁷ Even so, the acknowledgement of this principle by a leading jurist of thirteenth-century Outremer underscores the dependence of Outremer's marriage law upon the canonistic sources.

As for the substantive law of marriage, the jurists of Outremer were concerned with the problem of canonical irregularities which might invalidate marriages.¹⁸ One common irregularity occurred if the partners to a marriage had not yet attained the minimum age for marital consent. On this matter the jurists of Outremer took a curious position. They accepted the conventional Romano-canonical rule that the minimum age for marriage of females was twelve, but ruled that boys might be allowed to marry at age 13.¹⁹ The canonists had established fourteen as the minimum age for marriage by males and *Lo*

15 *Assises des bourgeois* 158-159, RHC Lois 2: 107-108, quoting the Roman law definition of marriage from *Inst.* 1.9.1; cf. *Lo Codi* 5.1.7, ed. Fitting, pp. 150-151; ed. Derrer, p. 110. See also John T. Noonan, Jr., "Power to Choose," *Viator* 4 (1973), 424.

16 *Livre de Jean d'Ibelin* 228, RHC Lois 1: 364.

17 Noonan, "Power to Choose," p. 431; Elizabeth M. Makowski, "The Conjugal Debt and Medieval Canon Law," *Journal of Medieval History* 3 (1977), 99-114; Kari Elisabeth Børresen, *Subordination et équivalence: nature et rôle de la femme d'après Augustin et Thomas d'Aquin* (Oslo, 1968), pp. 204-205; Hans Zeimentz, *Ehe nach der Lehre der Frühscholastik: eine moralgeschichtliche Untersuchung zur Anthropologie und Theologie der Ehe in der Schule Anselms von Laon und Wilhelms von Champeaux, bei Hugo von St. Viktor, Walter von Mortagne, und Petrus Lombardus* (Düsseldorf, 1973), p. 220. The principle was well stated by the anonymous author of the mid-twelfth century *Fragmentum Cantabrigiense* to the *Decretum* of Gratian, C. 27 pr., in Cambridge University Library, MS Add. 3321, vol. 1, fol. 10v: "Matrimonium enim inter coniuges parilitatem iure exigit, altero enim debitum exigente, alteri continere non licet; et hoc de matrimonio non solum iniciato, sed etiam per sexuum commixtionem consummato. Si matrimonium enim solum iniciatum fuerit, alteri continere licebat altero etiam inuito."

18 *Assises des bourgeois* 158, RHC Lois 2: 107.

19 *Livre de Jean d'Ibelin* 171, RHC Lois 1: 263-264; *Assises des bourgeois* 159, RHC Lois 2: 108.

Codi, an ultimately Roman source, agrees with this.²⁰ On this point, then, the marriage law of Outremer followed neither the canon law nor the Roman authorities known in the Latin East.

The marriage law of Outremer did incorporate in its own rules the canonical ban on marriage during the solemn fasting seasons of the ecclesiastical year.²¹ Likewise the *Assises* incorporated canonistic rules concerning consanguinity, affinity, and incest.²²

The provisions of the marriage law of Outremer treated thus far are, with a few minor variances, in accord with the matrimonial rules of contemporary canonists. There are some other points, however, where the law of Outremer diverges sharply from the general law of the Western church. One such discrepancy is a provision in the *Assises des bourgeois* that resurrected in modified form a long-obsolete Constantinean prohibition of intermarriage between free persons and those of unfree or freed status. The *Assises* limited the prohibition to marriage between the owner's son and the freedman's daughter.²³ The church had rejected this policy long before the mid-thirteenth century and it is startling to see it reappear in a legal text of this period.²⁴ This anachronistic peculiarity may perhaps reflect the special social hierarchy of the Holy Land under the Latins. Unfree and freed persons there were virtually always members of the conquered populations, rather than Latin settlers. Hence the prohibition of interclass marriage may have been intended to forbid intercultural unions between Latins and Muslims, Jews, or Eastern Christians. That such marriages had taken place fairly commonly during the early years of Latin rule in the Levant was noted by Fulcher of Chartres, writing about 1125. In a passage obviously intended to impress his readers back in Western Europe, Fulcher boasted of the speedy assimilation of Latin settlers in the Holy Land.

20 *Lo Codi* 5.1.2-4, ed. Fitting, pp. 149-150; ed. Derrer, p. 109. See also W. Onclin, "L'âge requis pour le mariage dans la doctrine canonique médiévale," in *Proceedings of the Second International Congress of Medieval Canon Law*, ed. Stephan Kuttner and J.J. Ryan, *Monumenta iuris canonici*, ser. C, vol. 1 (Vatican City, 1965), pp. 237-247.

21 *Assises des bourgeois* 158, 179, 180, RHC Lois 2: 107, 120-121, relying on Gratian, C. 33 q. 4 c. 10.

22 *Assises des bourgeois* 158-159, 161, RHC Lois 2: 107-111; Gratian, C. 33 q. 2 & 3, d.p.c. 21; cf. *Dig.* 38.10.4.

23 *Assises des bourgeois* 158, RHC Lois 2: 107; cf. *Dig.* 23.2.23, 44.

24 Gratian, C. 29 q. 2 c. 1, 3; X 4.9.1. See also Miguel Falcão, *Las prohibiciones matrimoniales de caracter social en el Imperio Romano* (Pamplona, 1973), pp. 43-58; Jean Gaudemet, *Sociétés et mariage* (Strasbourg, 1980), pp. 67-73, reprinted from *Revue internationale des droits de l'antiquité* 2 (1946), 329-336; Peter Landau, "Hadrians IV. Dekretale 'Dignum est' (X 4.9.1) und die Entstehung Unfreier in der Diskussion von Kanonisten und Theologen des 12. und 13. Jahrhunderts," *Studia Gratiana* 12 (1967), 514-515.

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Part of the assimilation process that Fulcher described consisted in the marriage of Latin men to Syrian, Armenian, or Saracen women who had been converted to Christianity.²⁵ The ban on interclass marriage that we find in the *Assises des bourgeois* may indicate, if my reading is correct, that this aspect of the social policy of the Latin states had changed by the mid-thirteenth century. This would account for the decision by the author of the *Assises* to appropriate a long-moribund provision on interclass marriage. Possibly he hoped to bolster a new policy with an ancient authority.

Both intermarriage and concubinage relationships between Latins and the Muslim inhabitants of Outremer were, as might have been expected, disapproved by the law of the Latin Kingdom.²⁶ What is noteworthy here is that the law of Outremer seems to have been slightly more lenient on this point than was the law of the church. The canon law on this matter underwent a long and complex development, but by the mid-thirteenth century the teaching was clear that *dispar cultus* was a diriment impediment to marriage and that therefore Christians might not validly marry pagans, Jews, Muslims, or heretics.²⁷ The *Assises des bourgeois* declare that marriage cannot *iuste* take place between Christians and heretics. This is not the same thing as saying that there can be no valid marriage between them. Validity and licitness are two different concepts: what the *Assises* seem to say is that such marriages are not licit. Whether this was intended to imply that, although illicit, such marriages might be valid (and hence the children of those marriages might be legitimate) is at the very least a possible reading of the text. As for concubinage, the prohibition and penalties enacted by the Council of Nablus are consistent with the usage of

25 Fulcher of Chartres, *Historia Hierosolymitana* 3.37.3-4, ed. Heinrich Hagenmeyer (Heidelberg, 1913), pp. 748-749; Richard, "Statut de la femme," p. 385.

26 *Assises des bourgeois* 158, RHC Lois 2: 107; Mansi 21: 264; Richard, "Statut de la femme," pp. 383-384.

27 While Gratian and later authorities considered marriage between two infidels valid, the doctrine that a Christian could not validly marry either an infidel or a heretic had been accepted by most authorities by the mid-twelfth century; see C. 28 q. 1 c. 15-17 and *glos. ord.* to c. 15 ad v. *omnem alienam*, as well as *glos. ord.* to c. 16 ad v. *hereticis*. When two Christians were married, the lapse of one party into heresy, paganism, Islam, or Judaism did not terminate the marriage; C. 28 q. 2 d. p. c. 2; Bernardus Papiensis, *Summa de matrimonio* 3.4, ed. E.A.T. Laspeyres (Regensburg, 1860; repr. Graz, 1956), pp. 291-292; Tancredus, *Summa de matrimonio* tit. 10 as transmitted by Raymond of Peñafort, *Summa de matrimonio*, ed. Xavier Ochoa and A. Diez (Rome, 1978), col. 951-955. (The *Summa de matrimonio* of Tancredus was edited by Raymond after the appearance of the *Liber extra* in order to bring the legal references up to date; the text of the *Summa*, however, was substantially unchanged.)

other Western Christian kingdoms; the matter was not explicitly treated by the canonists.²⁸

Some marriage provisions in the *Assises des bourgeois* may be characterized as efforts to spell out in detail matters that were either implied or assumed in canon law. Such would be, for example, the provision that a declaration of freedom and capacity to marry must be made at the time of betrothal,²⁹ the provisions for formal termination of betrothal,³⁰ and the provisions for disposition of property rights arising from betrothal.³¹ In this connection it is worth noting, too, that the *Assises des bourgeois* accepted without comment the principle that the property of married couples was held in common.³² This view of marital property was adopted in French customary law during the thirteenth century, but at the time of the redaction of the *Assises des bourgeois* it must have been a comparative novelty.³³ As for acquet property, this was not only held jointly by husband and wife, according to the *Assises des bourgeois*, but it was also freely disposable by testament.³⁴ This view of marital property was also quite new in French law at this period.

The bourgeois *Assises* follow the Roman law, as reported in *Lo Codi*, in excluding inter-vivos gifts between husband and wife.³⁵ This did not, of course, bar antenuptial gifts, nor did it prohibit legacies to a wife in a will. A much more novel provision in the *Assises* not only allowed husbands to make a small monthly allowance to their wives for household expenses, but even gave such practices, or agreements concerning them, the status of quasi-contracts binding upon the husband and his agents.³⁶ Although this passage is drawn in part from *Lo Codi*, the text in the *Assises* goes far beyond the provisions of *Lo Codi*,

28 Susan M. Stuard, ed., *Women in Medieval Society* (Philadelphia, 1976), pp. 85-86; Frederic William Maitland, "The Deacon and the Jewess; or Apostasy at Common Law," *Law Quarterly Review* 2 (1886), 153-165; James A. Brundage, "Concubinage and Marriage in Medieval Canon Law," *Journal of Medieval History* 1 (1975), 1-17.

29 *Assises des bourgeois* 162, RHC Lois 2:111-112.

30 *Assises des bourgeois* 163, RHC Lois 2:112; *Lo Codi* 5.2.5, ed. Fitting, pp. 151-152; ed. Derrer, pp. 110-111.

31 *Assises des bourgeois* 164-165, RHC Lois 2:112-113; *Lo Codi* 5.2.6, ed. Fitting, p. 152; ed. Derrer, p. 111.

32 *Assises des bourgeois* 181, RHC Lois 2:121.

33 Charles Donahue, Jr., "What Causes Fundamental Legal Ideas? Marital Property in England and France in the Thirteenth Century," *Michigan Law Review* 78 (1979), 69-73. The Roman law rule in *sine manu* marriage was that the married woman retained ownership and, if she wished, control of her nondotal property, the *parapherna*; *Dig.* 23.3.9.3; *Cod.* 5.14.9.

34 *Assises des bourgeois* 183, RHC Lois 2:122-123; Praver, "Etude préliminaire," p. 382, n. 83.

35 *Assises des bourgeois* 173, RHC Lois 2:117; *Lo Codi* 5.16.2, ed. Fitting, p. 169; ed. Derrer, p. 122. Both the *Digest* and Justinian's *Code* devoted whole titles to this problem: *Dig.* 24.1, *Cod.* 5.16.

36 *Assises des bourgeois* 174, RHC Lois 2:117.

which merely permit such gifts but stop far short of giving them binding force *quasi ex contractu*.³⁷ The position taken on this matter by the *Assises des bourgeois* seems to have no parallel in Roman law. As for the canonists, none of them have much to say on this subject beyond general statements to the effect that husbands have an obligation to provide for their wives and children.³⁸ The *Assises des bourgeois* also go far beyond the canonists in their provisions for the child-support obligations of husbands, both with respect to legitimate children following separation of the spouses and as regards the maintenance right of natural children.³⁹ Here the *Assises* are clearly dependent on *Lo Codi*, as Prawer has noted.⁴⁰ The *Assises* also contain remedies for safeguarding a married woman's dowry against an improvident husband and seek to protect her economically from the follies of her spouse.⁴¹ Although there is some allusion here to Roman law provisions on this subject as reported in *Lo Codi*, the *Assises* go into greater detail than the Roman law in specifying the protection accorded to the wife.⁴² As for the dower rights of a surviving widow in the estate of her deceased husband, both the *Livre de Jean d'Ibelin* and the treatise of Jacques d'Ibelin describe her as the usufructuary possessor of half of the estate.⁴³ This contrasts strikingly with the Romanist doctrine, which did not consider the wife a full-fledged member of her husband's family and hence accorded her only minimal claims upon his property at the time of his death.⁴⁴

Although the *Assises des bourgeois* restated the principle that marriage was a lifelong relationship that ended only at the death of one of the parties,⁴⁵ this was modified by provisions for the nullification of marriages that failed to meet the minimum legal requirements for validity.⁴⁶ Such matters, the *Assises*

37 *Lo Codi* 5.16.13, ed. Fitting, p. 170; ed. Derrer, p. 123.

38 Raymond of Peñafort, *Summa de matrimonio* 25.5, ed. Ochoa-Diez, col. 995, citing *Dig.* 23.3.7, 10. See also Richard H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge, 1974), pp. 67-68, 106; A. Esmein, *Le mariage en droit canonique*, 2 vols. (Paris, 1891; repr. New York, 1968), 2:95-96.

39 *Assises des bourgeois* 177-178, RHC Lois 2:119-120.

40 *Lo Codi* 5.18.1-2; 5.20.1-3, ed. Fitting, pp. 171-173; ed. Derrer, pp. 124-125; Prawer, "Etude préliminaire," pp. 378-379.

41 *Assises des bourgeois* 171-172, RHC Lois 2:116-117; cf. X 4.20.7; Raymond of Peñafort, *Summa de matrimonio* 25.7, ed. Ochoa-Diez, col. 997-998.

42 *Lo Codi* 5.11.2, 5.14.1-3, ed. Fitting, pp. 163-164, 167; ed. Derrer, pp. 119, 121.

43 *Livre de Jean d'Ibelin* 117, RHC Lois 1:279-280; *Livre de Jacques d'Ibelin* 68, RHC Lois 1:467.

44 Nov. 53.6, 112.5; W.W. Buckland and A.D. McNair, *Roman Law and Common Law*, 2d ed. (Cambridge, 1965), pp. 184-185.

45 *Assises des bourgeois* 158-159, RHC Lois 2:107-109.

46 *Assises des bourgeois* 160, RHC Lois 2:109.

declared, were within the exclusive competence of the courts christian. If a complaint about marriage matters was brought to the royal court, that court should refuse to hear the case and should remand it to the ecclesiastical judges.⁴⁷ This reflects the conventional practice of mid-thirteenth century European jurisdictions. Although ecclesiastical claims to exclusive competence in determining whether a marriage was valid had been contested in earlier periods, the church's jurisdictional claims were generally conceded by the thirteenth century.⁴⁸

But it is also apparent that the authorities in the Kingdom of Jerusalem were prepared in some circumstances to express their views on questions of validity. This is demonstrated by an interesting and unusual chapter of the *Assises des bourgeois* that provides for the separation of spouses on the grounds that the wife had become quarrelsome and difficult to live with. Under such circumstances, according to the *Assises*, the husband could seek a judicial decree of separation from bed and board (*divortium a mensa et thoro*) from the ecclesiastical courts.⁴⁹ This is very interesting, for what is described here is separation on the grounds of cruelty (*sevitia*) or hatred (*odium*), for which neither the classical texts of the canon law nor the Romanist treatise followed by the author of the *Assises des bourgeois* made any provision at all.⁵⁰ These grounds for action were developed by academic canonists. Separation because of cruelty or hatred was not something that legislative authorities created, but rather it was brought into being by the interpretative legerdemain of the teachers in the law faculties of the medieval universities. Although the history of the development of this doctrine is obscure, the reference to separation on these grounds in the *Assises des bourgeois* is very early indeed.⁵¹ Also interesting

47 *Assises des bourgeois* 181, RHC Lois 2:121.

48 Esmein, *Le mariage* 1:25-31; Duby, *Medieval Marriage*, pp. 17-22; Pierre Daudet, *L'établissement de la compétence de l'église en matière de divorce et consanguinité (France, Xème-XIIème siècles)* (Paris, 1941).

49 *Assises des bourgeois* 175, RHC Lois 2:118.

50 Esmein, *Le mariage* 2:93-95; Helmholz, *Marriage Litigation*, p. 100; *Lo Codi* 5.17, ed. Fitting, p. 171; ed. Derrer, pp. 123-124.

51 The date at which this cause for separation came to be accepted has never been determined. The text on which the commentators usually base their treatment of this topic is X 4.19.1, but the thirteenth-century commentators whom I have consulted say nothing of *odium* or *sevitia* as grounds for *divortium a mensa et thoro*. The earliest explicit reference to the matter that I have located occurs in the *Commentaria facundissima in quinque decretalium libros* by Petrus de Ancharano (ca. 1330-1416), 5 vols. (Bologna, 1580-1581), 4:135, commenting on X 4.19.1. It is possible, however, that an obscurely phrased passage in the *Summa super titulis decretalium* of Goffredus de Trano (d. 1245), to X 4.19 (Lyon, 1519; repr. Aalen, 1968), fol. 191rb, might refer to this idea. Goffredus' *Summa* was composed between 1241 and 1243, or, in other words, at almost exactly the time when the *Assises des bourgeois* was written.

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in this same chapter of the *Assises* are the passages that deal with proof of allegations of *sevitia*, and the provision that women and men have the same right to seek separation on these grounds.⁵² Separation *a thoro et mensa* obliged the husband to restore his wife's dowry to her or, if she was entering a religious house, to her convent.⁵³ Here the *Assises* seem to be following the canon law rules on the restitution of dowry.⁵⁴

Up to this point we have looked at the marriage law of Outremer principally as it is set forth in the *Assises des bourgeois*. When we turn to deal with marital property rights in feudal estates, as those are treated in the books of feudal law, we find a complex set of regulations which for the most part have little to do with Romano-canonical treatments of marriage. There are a few areas in the law of feudal property, however, that impinge upon canonistic notions of marriage in interesting and suggestive ways. I shall deal briefly with three of these topics. They are, first, the mechanism devised by the jurists of Outremer to limit freedom of choice when female fief-holders married; second, the treatment of the remarriage of widows; and, third, the problem of the marriage or remarriage of the elderly.

One well-known peculiarity of the feudal law of the Latin Kingdom was the liberality with which the law accepted the rights of women to hold fiefs either in their own right (as, for example, by purchase), or by succession to a deceased father or husband. At the same time the military needs of the kingdom demanded that female fief-holders be married, so that the king would not be deprived of the personal military service attached to the fief, which a woman could not render.⁵⁵ Accordingly the feudal law of Outremer was much concerned with the conditions under which noble women might be required to marry and also with the profits that the lord might realize from these marriage arrangements.⁵⁶

The ability of a feudal lord to control the marriage of an heiress who held a fief from him constituted a limitation on the woman's freedom of choice and on the very freedom of consent that was essential for the validity of her marriage contract in canon law. For this reason the legal writers of the Latin Kingdom took special pains to set limits to the lord's rights. The lord could only require a woman to marry when she held from him a fief for which

52 *Assises des bourgeois* 175, RHC Lois 2:118.

53 *Assises des bourgeois* 176, RHC Lois 2:118-119.

54 X 4.20.1-3.

55 Richard, "Le statut de la femme," pp. 378-379; *Livre de Jean d'Ibelin* 148-150, 177, 187, 277, RHC Lois 1:224-225, 279-282, 297, 359.

56 Richard, "Le statut de la femme," p. 380; *Livre de Jean d'Ibelin* 171, RHC Lois 1:264.

personal military service was owed.⁵⁷ Women who held other types of fiefs could not be required to marry, although if they did marry they were required to secure their lord's permission first. Further, the lord could not indefinitely refuse to grant this permission. If he delayed permission, the woman or her relatives had the right to demand that she be allowed to marry; if the lord then refused to give permission, he might lose his veto rights over candidates for her hand.⁵⁸ The procedures for exercising the lord's rights over the marriage of heiresses are spelled out in detail by Jean d'Ibelin and seem to have been framed in order to prevent, so far as possible, a successful attack upon the validity of the marriage in the courts christian.⁵⁹ One notable feature of the law on this matter is that the lord was required to offer a female heiress a choice of three men nominated by the lord as prospective husbands. The nominees must be suitable to her rank and station. Praver has argued convincingly that this provision of the law is a response to the pressure to assure the widow's family some input into the marriage decision.⁶⁰ Should the widow fail to choose one of the three candidates, she might be summoned by her lord to explain her reasons. If she failed to appear, she might be deprived forthwith of her fief. If she appeared, but failed to satisfy her lord that she had adequate reasons for refusal to marry one of his nominees, he might take control of her fief for a year and a day. At the end of that time he could require her once again to choose a husband from among three different candidates. Failure to make a choice the second time presumably resulted in permanent loss of the fief.⁶¹ These regulations seem to reflect an effort to compromise between the canonists' insistence that the free consent of the parties was essential to a valid marriage and the interest of the feudal lords of Outremer in securing the service of acceptable male warriors by marrying them to heiresses of desirable fiefs. That the woman was given a choice of three candidates for her hand suggests a need to argue that she had been able to exercise choice in selecting her husband; the lord's nominating power, of course, enabled him to ensure that she only considered marriage to men who were acceptable to the lord.⁶²

57 *Livre de Jean d'Ibelin* 177, RHC Lois 1:279.

58 *Livre de Jean d'Ibelin* 171, RHC Lois 1:264-265.

59 *Livre de Jean d'Ibelin* 228, RHC Lois 1:362.

60 *Livre de Jean d'Ibelin* 171, 227, RHC Lois 1:265, 359; *Livre de Jacques d'Ibelin* 67, RHC Lois 1:467; Praver, *Crusader Institutions*, pp. 30-31.

61 *Livre de Jean d'Ibelin* 227, RHC Lois 1:359-361; *Livre de Philippe de Navarre* 86, RHC Lois 1:559.

62 On the legal doctrine of marital choice see especially Noonan, "Power to Choose," pp. 419-434.

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The treatment of the remarriage of widows in the legal treatises of Outremer also reflects the social and military conditions of Latin settlements there. Maintaining the military posture of the Latin states required that widows who held fiefs from which military service was due remarry.⁶³ Although there had been some controversy on the matter early in the history of the Christian church,⁶⁴ and although there was some feeling that second marriages were not desirable on moral grounds,⁶⁵ the law of the church by the twelfth century allowed remarriage following the death of a first spouse.⁶⁶ Nonetheless the church discouraged the practice by denying the nuptial blessing to couples who married for a second time and by forbidding such marriages to be celebrated with solemn ceremony.⁶⁷ Theologians and canonists criticised second marriages, but they were not the only ones.⁶⁸ There was widespread popular disapproval of the remarriage of widows and widowers, in France and probably elsewhere. Such marriages commonly aroused local protests, which took the form of charivaris. While demonstrations of this sort were most common in rural communities, they also occurred in cities and seem to indicate that popular sentiment was offended by the spectacle of remarriage.⁶⁹ In the face of disapproval of second and subsequent marriages both among the clergy and the general public, it is striking that the jurists of thirteenth-century Outremer expected widows to

63 *Livre au Roi* 30, RHC Lois 1:626-627.

64 Willy Rordorf, "Marriage in the New Testament and in the Early Church," *Journal of Ecclesiastical History* 20 (1969), 193-210; Esmein, *Le mariage* 2:120; Joseph Freisen, *Geschichte des kanonischen Eherechts bis zum Verfall der Glossenliteratur* (Paderborn, 1893; repr. Aalen, 1963), pp. 665-676. The sharpest arguments against second marriage were voiced by Tertullian (ca. 150-240), especially in his *De monogamia* 10.7, 12.1-5, ed. P. Dekkers, CC 2 (Turnhout, 1954), pp. 1243, 1247-1248. The opposite view, however, also dates from a very early period in Christian history, as shown in the *Pastor* of Hermes 4.4, ed. R. Joly in *Sources chrétiennes* (Paris, 1958), pp. 162-163.

65 Gratian, D. 26 c. 5; see also John T. Noonan, Jr., "Novel 22," in *The Bond of Marriage*, ed. William Bassett (Notre Dame, 1968), p. 84; André Rosambert, *La veuve en droit canonique jusqu'au XIVe siècle* (Paris, 1923), p. 92.

66 Gratian, C. 31 q. 1 c. 10-13; C. 32 q. 4 c. 1.

67 Gratian, C. 31 q. 1 c. 8; Bernardus de Montemirato (Abbas antiquus; ca. 1225-1296), *Commentaria ad libros decretalium* to X 4.21.1 (Venice, 1588), fol. 132ra-rb; Hostiensis, *Summa aurea*, lib. 4 tit. De secundis nuptiis (Lyon, 1537; repr. Aalen, 1962), fol. 224vb.

68 For example, St. Bonaventure, *Commentaria* to 4 Sent. 42.3.2, in his *Opera*, ed. A.C. Peltier, 15 vols. (Paris, 1864-1871) 6:443-444; Nicholas de Lyra, *Postilla* to Deut. 24.4 ad v. *ne peccare facias* (Strasbourg, 1492; unpaginated). The most savage critic of second marriages among the late twelfth-century canonists was Johannes Faventinus (d. ca. 1187), who held that second marriages should not be tolerated because they were a sign of sexual incontinence; see his *Summa* to C. 31 q. 1 c. 8 ad v. *secundis nuptiis* and to C. 31 q. 1 c. 9 ad v. *secundum ueritatis ratione*, in London, British Library, MS Royal 9.E.VII, fol. 140 vb.

69 Natalie Z. Davis, "The Reasons of Misrule: Youth Groups and Charivaris in Sixteenth-Century France," *Past and Present* 50 (1971), 45, 53-54, 65-66.

remarry as a matter of course and provided that they could be forced to remarry, if need be on pain of forfeiture of their fiefs.⁷⁰ It is also surprising to find the law books of the Latin Kingdom resurrecting an ancient Roman rule that required a mandatory waiting period for widows before remarriage.⁷¹ Although the early medieval church had accepted that rule, it had been obsolete in canon law since the ninth century and had been specifically condemned by Pope Alexander III (1159-1181).⁷²

Finally, a word about the marriage, or remarriage, of the elderly. This was a topic on which neither canonists nor civilians had much to say. Although both recognized a minimum age for marriage, neither contemplated a maximum limit on age at marriage. Jean d'Ibelin, however, enunciated a novel principle in marriage law, that after a woman had attained the age of sixty, the lord from whom she held a fief might no longer require that she marry as a condition of retaining her feudal holding.⁷³ She retained the right to marry if she wished, but she could no longer be compelled to do so.

This remarkable doctrine is founded upon two arguments. First, Jean d'Ibelin reasoned that requiring women of advanced age to marry was contrary to God's will and to the dictates of reason. This was essentially a natural law argument, based on the premise that marriage of very elderly women is inappropriate because there is no possibility that the marriage will produce offspring.⁷⁴ Jean d'Ibelin also specified that a woman who declined to marry on the grounds of advanced age could not be allowed to do this in order to lead a life of licentious sensuality. Rather she must avow a "ferme propos de tenir chasteté de son cors et garder sei de peché."⁷⁵

The second reason advanced in justification of Jean d'Ibelin's doctrine was based on an analogy with the military service obligations of male fief-holders. Men, Jean declared, are excused from military service when they reach the age of sixty and this is the "usage custom, or assise of the Kingdom of Jerusalem and of Cyprus."⁷⁶ The implications of this analogical argument are far-

70 *Livre au Roi* 30, RHC Lois 1:627.

71 *Livre au Roi* 30, RHC Lois 1:626-627; also *Assises des bourgeois* 166-167, RHC Lois 2:113-114. For the Roman *tempus luctus* see *Dig.* 3.2.10-11; Paul Frédéric Girard, *Manuel élémentaire de droit romain*, 8th ed. (Paris, 1929), pp. 178-179.

72 X 4.21.4; Esmein, *Le mariage* 1:401-402.

73 *Livre de Jean d'Ibelin* 228, RHC Lois 1:362-364.

74 *Livre de Jean d'Ibelin* 228, RHC Lois 1:363, John T. Noonan, Jr., *Contraception: A History of Its Treatment by the Catholic Theologians and Canonists* (Cambridge, Mass., 1965), pp. 289-292, discusses the problems raised by sterile marriage.

75 *Livre de Jean d'Ibelin* 228, RHC Lois 1:364.

76 *Livre de Jean d'Ibelin* 228, RHC Lois 1:362.

reaching, for it implies that just as male fief-holders render "service de leur cors" through military service, female fief-holders render a comparable bodily service through marriage in the interest of their feudal lord. Thus the ladies of the Latin Kingdom, in the view of one of the kingdom's most eminent jurists, constituted a branch of the kingdom's army. Side by side with the chivalrous army of knights, who fought in the field, and the *militia celestis* of clerics, who fought on the kingdom's behalf through prayer and spiritual service, Jean d'Ibelin implies that the women of Outremer made up a third echelon of Jerusalem's army. We might facetiously label this the *militia cubiculi*, since its members served the interests of the kingdom's rulers in the nuptial chamber, rather than on the battlefield.

If we can, with Paul Rousset, speak of the "stratégie spirituelle" of the clergy during the First Crusade,⁷⁷ it is perhaps not too farfetched to regard the marriage law of the Latin Kingdom as the codified rules of a "stratégie matrimoniale," whose successful pursuit was also a vital element in the social and political fortunes of Outremer.

77 Paul Rousset, *Les origines et les caractères de la première croisade* (Neuchâtel, 1945), p. 88.

XVIII

CHRISTIAN MARRIAGE IN THIRTEENTH-CENTURY LIVONIA

The conquest of the Baltic littoral at the beginning of the thirteenth century brought with it Christianization of the region. The early history of these closely-linked developments is known to us primarily from the narrative account of Henricus de Lettis, a priest and missionary who set down a vivid, detailed record of these events—in some of which he was a participant, to many of which he was an eye-witness—in 1226-1227.¹ An attentive reader of Henry's *Chronicle* may notice two features of his account which, on reflection, seem rather curious. One of these features is the peculiar kind of information furnished in Henry's narrative about women. Women appear in Henry's *Chronicle* primarily as spoils of war. The recurrence of passages which mention the capture of women along with other booty is persistent, almost monotonous:

They took them out of the forests and killed them and took the women and children away as captives. . . . They seized many people, killed all the men, and dragged away the women and children as captives. . . . They killed all of the males, took the women and children captive, and took revenge upon their enemies. . . . They killed all the men, took the women and children, and after doing all the harm they could, they returned to Livonia.²

This passage describes a Livonian raid on Estonia in 1215. But it matters little who is raiding whom—whether it is Livonians who are raiding Estonians, or Lithuanians who are preying upon Russians; or whether any of these are at war with Livonians, either Christian or pagan; or whether the assailants are Germans, either laymen or members of the religious military order of the Livonian Brothers of the Sword. Regardless of the identity of the attackers or their victims, females suffer the same fate—survival as captives—time after time.³

In and of itself this is not altogether surprising: it has been an oft-told story of conquerors and conquered, of assailant and victim, since the earliest recorded periods of human history. True, it is perhaps a trifle odd that Henry's *Chronicle*

gives so few details about the treatment of the women after their capture; Henry may have considered such details self-evident, unedifying, and in themselves unimportant.⁴ But, in general, Henry paid remarkably little attention to females. Aside from his references to women as captives taken in warfare, his only other remarks about women in the *Chronicle* have to do with their role as stubborn adherents of the pagan religions which Bishop Albert of Riga and his Saxon soldiers were crushing into oblivion.⁵ But even these references to women are few and scattered.

A second feature of Henry's *Chronicle* that seems rather curious is the way in which he identifies the conversion of pagans to Christianity with subjection to the Christian law. The chronicler's repeated emphasis on the submission of converts to the Christian law gives the impression that he considered this submission to be the most essential part of the conversion process, next after baptism. Thus in 1214, after recounting a fight which the Estonians lost, he adds:

The most treacherous man, Lembit, was baptized, as were all the others, men, women, and children, who were in the fort. They promised that they would always keep the Christian law faithfully.⁶

Again, when Bishop Albert had to deal with prospective converts from Mežotne, he defined the terms of their conversion:

If you are willing to be baptized and to accept the Christian laws, then we will give you the help and receive you into the company of our fraternity.⁷

Similar linking of baptism with the acceptance of the Christian law as the two essentials of conversion appears in many other passages of Henry's *Chronicle*.⁸

Some of these passages make it obvious that one of the "laws of Christianity" which the conquerors insisted upon, and which their new converts bitterly resisted, was the tithe.⁹ But it is also clear that other parts of the Christian law, besides the tithe, were implicated in the resistance that the German conquerors met from the Baltic peoples over whom they were extending their rule. One of these areas of resistance was the law of marriage.

The introduction of the Christian religion into Livonia and the other areas of the Baltic was accompanied by the introduction of Christian marriage law and practices, together with attempts to abolish pagan rituals and customs that conflicted with Christian beliefs and uses. It is here that the two features of Henry's *Chronicle* that I have remarked upon—the treatment of women and the emphasis upon Christian law in conversion—seem to intersect with one another.

The German missionaries in the Baltic were aware that the introduction of new marriage customs must take place slowly and discreetly. Too rapid or too forceful an attempt to replace pagan customs with Christian ones might result in apostacy and rebellion.¹⁰ Henry reports that the papal legate, Bishop William of Modena,

always admonished the Germans not to hurt their subjects by excessive exactions or undue harshness. They were to bring in Christian customs and abolish pagan rites by assiduously teaching the faith of Christ and to teach and instruct them both by their words and by their good examples.¹¹

The missionaries in the Baltic almost certainly believed that matrimonial practices among the pagans whom they sought to convert created real marriage unions. The existing law of Western Christendom accepted such marriages as valid.¹² The missionaries also presumably taught that such marriages were not necessarily indissoluble, although on this point the Church's law was ambiguous.¹³ If one spouse accepted Christianity while the other remained faithful to paganism, there was some question as to whether the converted party could properly take a new marriage partner.

At the very close of the twelfth century and the opening of the thirteenth century, Pope Innocent III sought to clarify the law on these points. In his decretal *Quanto te* (1199), Innocent wrote to the great canonist, Huguccio, then serving as Bishop of Ferrara, to give a ruling on these matters. Where one party to a pagan marriage was converted to Christianity, Innocent declared, and where the pagan party either refused to live with the Christian or else attacked the Christian's new-found faith, the marriage could be dissolved and the Christian party could properly remarry, even during the lifetime of his former spouse.¹⁴ These were not matters which overly troubled missionaries and their converts in Livonia it seems—or if they did, such problems left no trace in the surviving records.

Another aspect of Christian marriage law created special problems for the mission in Livonia, however, and on this point the leader of the mission, Bishop Albert of Riga, sought a papal ruling early in the history of the Livonian Church. In 1201 Bishop Albert sent a representative to Rome to secure papal decisions of a number of issues. The representative was Theodoric of Treiden, later to become Abbot of the Cistercian monastery at Daugavgrīva (Dünamünde) and Bishop of Estonia († June 1219). Theodoric's commission from Bishop Albert included a number of varied matters on which papal decisions and authorizations were desired by the missionaries in Livonia.¹⁵ Although papal responses to the other requests seem to have perished, Pope Innocent III's reply to the missionaries' inquiries on three matters have survived. The papal letter, *Deus qui ecclesiam*, dated from the Lateran on 19 April 1201, dealt with three separate subjects: the attire of missionaries, equitable considerations in the assignment of penance, and marriage arrangements among the Livonians converted to Christianity.¹⁶ The canonists, who were interested in the general rulings which this letter embodied, found it convenient to dissect the letter into three parts and to assign each part to a different portion of their decretal collections.¹⁷

Putting aside the other portions of *Deus qui ecclesiam*—although they are not without interest in themselves—we shall concentrate here on the section dealing with matrimonial law. Pope Innocent began this portion of his letter by noting that the marriage usages of the newly-converted Livonians were quite different

from those of the Roman Church. Specifically, the Livonians disregarded the canonical rules of affinity and consanguinity; they did this most particularly in that they allowed men to marry the widows of their deceased brothers, a practice otherwise known as "Levirate marriage." The pope further noted that this was a serious matter for the Livonians and that unless they were allowed to maintain this custom they would not submit to baptism. For this reason, Pope Innocent continued, because of the newness of the Church in Livonia and because of the weakness (*infirmitas*) of the Livonians on this point, he would allow this practice to continue within certain limits. The pope stipulated that the marriage must already have been contracted prior to baptism and that the deceased brother must have died childless. The Livonians would be allowed to continue in Levirate marriages, even after baptism and conversion to Christianity, "so that they may pass on the seed of the dead man according to the Mosaic law."¹⁸ Levirate marriages might not be contracted after conversion. Furthermore, dispensation to allow this type of marriage would be operative only during the initial period of missionary activity in Livonia. It was not his intention, the pope declared, to countenance Levirate marriages after the faith had been firmly and solidly rooted in Livonia.

Pope Innocent concluded the matrimonial section of *Deus qui ecclesiam* with some further general observations on matrimony. The sacrament of marriage does indeed exist both among infidels and among Christians, he averred, and he quoted St. Paul in support of his position.¹⁹ Since pagans are not bound by canonical rules—a statement bolstered by a further quotation from St. Paul²⁰—it is proper for them to contract marriage within degrees of relationship prohibited by the canons. This permissiveness had a specific missionary purpose: usages contrary to the canons were countenanced in order that married pagan women might not fear that embracing Christianity would cost them their husbands. Converts married within the prohibited degrees of relationship might readily and freely remain together, the pope declared, "[s]ince the sacrament of baptism forgives offenses; it does not dissolve marriage."

Now this was all very interesting and rather startling. Pope Innocent's ruling was novel, although Innocent took pains to note that it was not utterly unprecedented. Nearly six centuries earlier, Pope Gregory the Great was reported by John the Deacon to have made a somewhat similar ruling, setting aside the canonical rules of affinity and consanguinity as a favor to English converts to Christianity. The earlier ruling was incorporated into Gratian's *Decretum* and Innocent was apparently aware of it.²¹ He should also have been aware, however, that Gratian had carefully discussed the decision of Pope Gregory—and had explicitly denied that it could apply to the marriage of the widow of a deceased brother.²² Perhaps the closest analogous precedent—although Innocent did not allude to it and possibly may not have been aware of it—was a ruling given by Pope Alexander III to the Bishop of Winchester in which the pope allowed that a widower might marry his first wife's sister provided, however, that the first marriage had not been consummated.²³ The

situations were similar, indeed, but not identical. Both involved affinity in the first degree, but the specification of nonconsummation in the case settled by Alexander III was a significant qualification not stipulated by Innocent III in *Deus qui ecclesiam*.

Marriage between related parties was an area of matrimonial law which Innocent had been concerned about for some time prior to 1201. In December 1198, toward the close of the first year of his pontificate, Innocent had made a cautious general ruling in this field of marriage law. In the decretal *De infidelibus* he had held that infidels who were converted to Christianity and who were married within the forbidden degrees of relationship prior to conversion should not be separated from their spouses after baptism.²⁴ A few months later, in May 1199, Innocent had gone a step further when he issued the decretal *Quanto te*, discussed earlier in this essay.²⁵ Then, in April 1201, he took the far more radical step of authorizing the matrimonial concession for the Livonian church enunciated in *Deus qui ecclesiam*.

The position which Innocent took in *Deus qui ecclesiam* was really quite daring. Wide as the dispensing power of the pope was conceded to be, the canonists commonly taught that there were some things he could not, under any circumstances, dispense from. In particular it was held that the pope could not dispense from observance of divine law, as embodied in the sacred scriptures, especially in the New Testament.²⁶ But marriage to the widow of one's brother was prohibited by passages in both the Old and New Testaments.²⁷ In authorizing the dispensation granted by *Deus qui ecclesiam*, then, Innocent was pushing the papal power of dispensation to its outermost limits and, quite possibly, beyond them.

In a different context, indeed, Innocent III seems to have shared this view. In another decretal letter, also written in 1201, he ruled that a woman married to a man who was related to her within the degrees of consanguinity forbidden by the divine law might not have sexual relations with her husband without committing mortal sin.²⁸

The decretalists who commented on *Deus qui ecclesiam* did so gingerly and with little apparent enthusiasm for the ruling. The most they would say, by way of comment on this surprising decretal, was that the precariousness of the Church's foothold in Livonia might justify such sweeping exercise of the papal dispensing power.²⁹ When they dealt with dispensations in other passages of the decretal collections, the commentators were bolder and questioned the possibility of granting dispensations against the scriptural prohibition of Levirate marriages.³⁰

Innocent III, in granting the concession for the Livonian church contained in *Deus qui ecclesiam*, was treading on morally and legally dangerous ground.³¹ It is highly improbable that he would have done so had he not been convinced that the granting of this favor was absolutely essential for the future of Christian missionary work in Livonia. This, in turn, implies that Theodoric of Treiden must have made strong representations to the pope on this point. Presumably he

did so with good reason.

Taken together these circumstances may suggest an explanation for the anomalies in Henry's *Chronicle* that were noted at the beginning of this paper. Henry tells us that the Livonians and other Baltic peoples resisted the introduction of Christian law, not only the law of tithes, but also other aspects of the law of the Church. Henry also makes it clear that it was normal for victorious parties in armed conflicts in the Baltic to carry off women as prisoners and that this was a regular, recurrent feature of warfare in this region in the early thirteenth century. The decretal *Deus qui ecclesiam* shows that Levirate marriage was a strongly-established custom among the pagan Baltic peoples, one which they would not easily relinquish, even on conversion to Christianity. The convergence of these themes suggests that the Levirate marriage custom may explain the treatment of women and the emphasis on Christian law in Henry's *Chronicle*. The resistance to Christian law that Henry described may very well have been rooted in social beliefs about the desirability of Levirate marriage in order to continue the blood-line of deceased warriors. Since Christian marriage law threatened this custom, resistance of the type which Henry described would be quite understandable. Further, given the Levirate marriage custom as a basic feature of pagan Baltic society—as Innocent clearly understood it to be—it also becomes understandable why armies in this region made a particular point of carrying off the women who belonged to their defeated foes. By so doing, the victors succeeded not only in defeating and slaying their enemy; they could also eradicate his blood-line from the face of the earth. Carrying off the women meant that the brothers and other surviving kinsmen of the slain were prevented from marrying the wives of their deceased relatives. In the society of thirteenth-century Livonia, this meant utter and final extirpation of the defeated foe: it was the final solution with a vengeance. These considerations, in turn, help to make Innocent III's decretal *Deus qui ecclesiam* more comprehensible.

Thus the decretal explains the apparent anomalies of the *Chronicle*, while the *Chronicle* enables us to understand more clearly the anomalous law of this strange and isolated decretal.³²

NOTES

- 1 *Heinrici Chronicon Livoniae: Monumenta Germaniae Historica, Scriptores rerum germanicarum in usum scholarum*, ed. Leonid Arbusow and Albert Bauer, 2nd ed. (Hannover: Hahn, 1955 [cited hereafter as *Chronicle*, ed. Arbusow]); *The Chronicle of Henry of Livonia*, trans. James A. Brundage (Madison: University of Wisconsin Press, 1961 [cited hereafter as *Chronicle*, trans. Brundage]). Henry testifies to his own participation and his eye-witness knowledge of events in *Chronicle*, 29.9, ed. Arbusow, p. 215; trans. Brundage, pp. 237-38. The most perceptive single treatment of Henry's career and personality is Paul Johansen, "Die Chronik als Biographie: Heinrich von Lettlands Lebensgang und Weltanschauung," *Jahrbücher für Geschichte Osteuropas*, NS 1 (1953), 1-24. For an overview of the literature on Henry and his work, see Albert Bauer's "Einleitung" to the *Chronicle*, ed. Arbusow, pp. v-xviii.
- 2 *Chronicle*, 19.3, ed. Arbusow, pp. 125-26; trans. Brundage, pp. 145-46.

- 3 Similar passages occur frequently; see *Chronicle*, 11.5; 12.6; 13.5; 14.6, 10, 12; 15.2, 7; 17.5; 19.9, 11; 20.2, 3, 5, 6; 21.5, 7; 22.4; 23.5-7, 9; 27.1; 28.6, and *passim*.
- 4 The sole exception occurs near the end of Henry's *Chronicle*, at 30.1 (ed. Arbusow, p. 216; trans. Brundage, p. 238), where the chronicler describes the sexual exploitation of female captives by the pagans of Oesel.
- 5 *Chronicle*, 1.10; 9.5; ed. Arbusow, pp. 10, 28; trans. Brundage, pp. 28, 50.
- 6 *Chronicle*, 18.7; ed. Arbusow, p. 120; trans. Brundage, p. 140.
- 7 *Chronicle*, 23.3; ed. Arbusow, p. 156; trans. Brundage, p. 174.
- 8 Thus *Chronicle*, 10.15; 14.11; 15.5; 16.3, 4; 19.8; 21.5; 23.6; 29.4, and *passim*.
- 9 *Chronicle*, 15.5; 16.4; ed. Arbusow, pp. 92-93, 110; trans. Brundage, pp. 114, 130.
- 10 As happened, for example, in 1212: *Chronicle*, 16.3, ed. Arbusow, p. 107; trans. Brundage, p. 126.
- 11 *Chronicle*, 29.5, ed. Arbusow, p. 212; trans. Brundage, p. 234. On William of Modena and his legation see Brundage, "The Thirteenth-Century Livonian Crusade: Henricus de Lettis and the First Legatine Mission of Bishop William of Modena," *Jahrbücher für Geschichte Osteuropas*, NS 20 (1972), 1-9, and the literature cited therein.
- 12 The Church's doctrine on these points was based on the conventionally accepted interpretation of I Cor. 7:10-16. Gratian, ca. 1140, concluded in his *Decretum*, C. 28 q. 1 d. p. c. 14, that marriage did legitimately exist among non-Christians, a point not thereafter substantially disputed. (Citations to the texts of the *Corpus iuris canonici* are taken from the standard edition by E. Friedberg, 2 vols. [Leipzig: Tauchnitz, 1879; rpt. Graz: Akademische Druck- und Verlagsanstalt, 1959]. The conventional canonistic citation system is used. The *Quinque compilationes antiquae* will be cited from the Friedberg edition [Leipzig: Tauchnitz, 1882; rpt. Graz: Akademische Druck- und Verlagsanstalt, 1956].)
- 13 *Decretum*, C. 28 q. 1 c. 8-9, seems to support the notion that such unions were dissoluble. This interpretation was adopted by some of the most influential legal commentators. Rolandus Bandinelli (Pope Alexander III) in particular discussed the matter at length and concluded that the marriage of infidels, although *legitimum* and *consummatum*, were not *ratum*, *id est indissolubile*: see his *Summa* to C. 28 q. 1, ed. Friedrich Thaner (Innsbruck: Wagner, 1874), pp. 133-35. Rolandus added, however, that if such a couple had sexual relations after the conversion of one spouse to Christianity the marriage was thereby confirmed (*ratum*) as a Christian union and thenceforth was indissoluble: *Summa* to C. 28 q. 2, ed. Thaner, pp. 141-42. On this whole matter see the lucid account by John T. Noonan, Jr., *Power to Dissolve: Lawyers and Marriages in the Courts of the Roman Curia* (Cambridge, Mass.: Belknap Press, 1972), pp. 342-47.
- 14 Comp. III, 4.14.1 = X 4.19.7.
- 15 *Chronicle*, 4.6, ed. Arbusow, p. 14; trans. Brundage, p. 38.
- 16 Friedrich Georg von Bunge, et al., *Liv-, Esth- und Curländisches Urkundenbuch*, series 1, 12 vols. (Reval: various imprints, 1853-1910), 1:15-18 (No. 13), dated the letter incorrectly to 1199. An improved text, correctly dated, is printed in *Senās Latvijas Vēstures Avoti*, ed. A. Švābe, 2 vols. (Riga: Latvijas Vēstures Institūta Apgādiens, 1937), 1:23-24 (No. 33).
- 17 Comp. III, 3.12 = X 3.1.11; Comp. III, 4.14.3 = X 4.19.9; Comp. III, 5.20.1 = X 5.38.8.
- 18 The allusion is to Levirate marriage: see Deut. 25.5-10; cf. Gen. 38.8-10.
- 19 I Cor. 7:12.
- 20 I Cor. 5:12.
- 21 *Decretum*, C. 35 q. 3 c. 20. Innocent referred to this passage in justifying his own decision: "Ad haec sanctae memoriae Gregorii papae praedecessoris nostri adjaerentes. . . ." (X 4.19.9).
- 22 *Ibid.*, C. 35 q. 3 d. p. c. 21.

- 23 Comp. I, 4.1.2 (X-).
- 24 Comp. III, 4.10.2=X 4.14.4.
- 25 Comp. III, 4.14.2 = 4.19.8.
- 26 The development of canonistic doctrine on the pope's power of dispensation is complex and cannot be discussed at length here. The basic position of Gratian was summed up in D. 13 pr.: "Item aduersus naturale ius nulla dispensatio admittitur; nisi forte duo mala ita urgeant ut alterum eorum necesse sit eligi." Innocent may well have believed that this was precisely the case in the Livonian situation: either the Livonians must be allowed to practice Levirate marriage or else they would reject the Christian faith. Both were evils and he doubtless considered that *Deus qui ecclesiam* permitted the lesser of the two evils in order to avert the greater one. This position was undermined, however, by another passage in the *Decretum*, D. 14 c. 2, which qualified the dispensing power by a further condition: "[I]lla semper conditione seruata, ut in his, que uel dubia fuerint aut obscura, id nouerimus sequendum, quod nec preceptis euangelicis contrarium, nec decretis sanctorum Patrum inueniatur aduersum." The prohibition against dispensations from New Testament precepts was underscored by the decretist commentators, e.g., Rufinus, *Summa* to D. 14 c. 2 and C. 1 q. 7 d. a. c. 6, ed. Heinrich Singer (Paderborn: F. Schöningh, 1902; rpt. Aalen: Scientia Verlag, 1963), pp. 34-35, 234; *Summa Parisiensis* to D. 14 c. 2, ed. T. P. McLaughlin (Toronto: Pontifical Institute of Mediaeval Studies, 1952), p. 14. On other aspects of dispensation see Brundage, *Medieval Canon Law and the Crusader* (Madison: University of Wisconsin Press, 1969), pp. 35-36, and the literature cited therein.
- 27 Lev. 18:16, 20:21; Mark 6:18.
- 28 Comp. III, 2.7.3 = X 2.13.13.
- 29 Thus Bernardus Parmensis, in his *Casus Longi* to X 4.19.9 (Venice, 1591), concludes: "Nota, quod propter nouitatem fidei, dispensatur cum aliquibus ubi alias non dispensaretur." The *glossa ordinaria* added nothing substantial to the understanding of the decretal, save to cite some related cases. Other commentators were similarly restrained: Goffredus de Trano, *Summa super titulis decretalium*, Hostiensis, both in the *Lectura* and the *Summa aurea*, Joannes Andrea, in his *Novella Commentaria*, Gulielmus Durandus in the *Speculum*—all of them content themselves with brief mentions of *Deus qui ecclesiam* but give no substantial exposition of it. Panormitanus (1386-1453?) qualified the Livonian situation as singular, adding that the whole matter of the exceptional ruling in *Deus qui ecclesiam* was moot, for it no longer applied by his time: *Commentaria* to X 4.19.9 (Venice, 1588), vol. 7, fol. 82^{va}.
- 30 *Glossa ordinaria* to X 2.13.13 (Venice, 1591), ad v. *non potest*: "[I]d est, non vult, vel non expedit . . . quoniam Papa in omnibus dispensare potest, quae non sunt contra articulos fidei vel generalem statum ecclesiae. . . . Idem credo de gradibus divina lege prohibitis, ut hic dicit, unde proprie ponitur hoc verbum, 'non potest' et ideo haec expositio, 'non vult' vel 'non expedit' non habet locum hic." See also *glos. ord.* to X 2.13.13 ad v. *divina lege, divina*.
- 31 It is perhaps significant that the Livonian mission was also a crusading venture. It has been pointed out in an earlier study that Innocent III was prepared to make other radical and fundamental changes in the Church's marriage law in order to promote the crusades: "The Crusader's Wife: A Canonistic Quandary," *Studia Gratiana*, 12 (1967), 425-41. The conservative reaction of the canonists to *Ex multa* (X 3.34.9) was strikingly similar to their treatment of *Deus qui ecclesiam*.
- 32 The ironic after-life of *Deus qui ecclesiam* and its rôle in the divorce of Henry VIII of England from Catherine of Aragon is, of course, well-known. See Geoffrey de C. Parmiter, *The King's Great Matter* (New York: Barnes and Noble, 1967).

XIX

Prostitution, Miscegenation and Sexual Purity in the First Crusade

THE FIRST Crusade was, from the beginning, a pilgrimage and an act of penance for the sins of its participants. The crusaders hoped that their presence in the expedition would cleanse them of the guilt and purge them of the penance that their sins merited.¹ A substantial part of the guilt that crusaders felt undoubtedly involved sexual offences. Early medieval writers on moral issues were virtually unanimous in teaching that sex was an unclean, unholy business that defiled both body and soul; thus sex of any kind was exceedingly difficult to reconcile with the highest ideals of Christian life. Even within marriage, prominent authorities taught, sexual relations were tainted with impurity, for marital coitus was always tinged with traces of the sin of lust.² Yet, at the same time, married couples were obliged to have sexual relations with one another on demand; in obedience to St Paul's dictum (1 Cor. 7:5) they should abstain from coitus only for short periods of time by mutual consent.³ Rather inconsistently, however, early medieval penitential handbooks prescribed that married persons must refrain from sexual activities during substantial parts of the ecclesiastical year: throughout Lent and Advent, on Sundays, feast days, the vigils of major feasts, the week before Pentecost, and, according to some, on all Wednesdays, Fridays, and Saturdays throughout the year.⁴ Complete sexual abstinence was also normally required for persons who were doing penance – such as pilgrims, for example.⁵

This censorious disapproval of sex, even within marriage, grew even more pronounced during the Gregorian reform.⁶ The major canonistic authorities of the reform period, notably Bishop Burchard of Worms (965-1025) and Bishop Ivo of Chartres (1040-1116), echoed these views. Not only did they prohibit extramarital sex of all kinds at all seasons and under all circumstances, but they repeated the numerous restrictions that earlier writers had placed upon marital sexuality and added some further ones of their own.⁷ Ivo's views are particularly pertinent for understanding the attitudes toward sexual matters of participants in the First Crusade, since Ivo finished his major canonical treatises, the *Decretum* and the *Panormia*, between 1094 and 1096, just as the Crusade was taking shape.⁸ Ivo's restrictive views about marital sex were not peculiar to him: similar notions abounded in the work of his contemporaries, such as his old schoolmate, the archbishop of Canterbury, St Anselm of Bec (1033-1109), and Abbot Guibert of Nogent (1053-1124), who was one of the major chroniclers of the First Crusade.⁹

In light of all this, it is not astonishing to find that contemporary accounts of the Crusade take a jaundiced view of the sexual activities of participants in that expedition. This paper will examine the problem of the crusaders' sexual lapses and the treatment of them by contemporary writers. I shall deal with four main themes: the participation of women in the First Crusade and their roles in the crusading army; extramarital sexual activity by the crusaders; inter-marriage of crusaders and non-Latin women; and cross cultural sexual violence during the Crusade.

When Pope Urban II proclaimed the First Crusade in 1095, he did not anticipate that women would participate in the venture; the chroniclers who reported his sermon at Clermont

represented him as forbidding women to enlist in the Crusade.¹⁰ Urban and his contemporaries assumed that the Crusade would be an all-male expedition; official letters, as well as the accounts of poets and chroniclers, described tearful scenes in which husbands tore themselves away from their wives, while the wives bemoaned the loss of the companionship and protection of their mates.¹¹ But in fact the Crusade was by no means composed exclusively of men and not all wives remained behind when their husbands departed for Jerusalem. The armies that comprised the Crusade included women of many sorts – married women with their husbands, nuns, prostitutes, and women of ambiguous status.¹²

The presence of prostitutes on Crusade seemed to shock some chroniclers, who lamented that harlots, loose women, and other dishonest and criminal types infested the crusading armies and infected the soldiery with their vices.¹³ Archbishop Baldric of Dol noted with satisfaction that during the siege of Nicaea the crusaders closed down all the brothels in their camp. Although some crusaders had women living with them during the siege, Baldric added, these were either married couples or else the women were simply servants.¹⁴ By the time the army reached Antioch, however, the *bordellos* were back in operation within the camps themselves.¹⁵ This is scarcely surprising: armies have always attracted campfollowers, and later crusades certainly had their share of organised brothels.¹⁶ Some modern writers have asserted that returning crusaders were responsible for introducing the brothel into western Europe, but this is certainly not true; the West was well-provided with these institutions long before 1095.¹⁷

The prostitutes and other women in the Crusade's ranks performed a number of services for the soldiers, in addition to providing them with sexual favours. We read of women helping the fighting men during battle, bringing them food and water, comforting them, and exhorting them to fight harder.¹⁸ According to Baldric, women and other noncombatants also played important roles in the spiritual strategy of the crusade, beseeching God's favour in prayer while the able-bodied men were occupied in fighting.¹⁹ Certainly the women also shared the hardships of the army as well, and the chroniclers occasionally note that one or another woman was killed in action.²⁰

But the vast majority of notices concerning women in the records of the First Crusade deal with the sexual temptations that they posed for male crusaders and the lamentable frequency with which the men yielded. The crusaders' proclivity to sexual sin became an oft-repeated refrain in the narrative accounts. The chroniclers blamed every reversal that the crusaders suffered on the sexual excesses of the men.²¹ When the Hungarians defeated Gottschalk's popular crusaders, Albert of Aachen noted that this happened because the crusaders had indulged in fornication.²² Fulcher of Chartres declared that Qilij Arslan's ambush of the crusading army at Dorylaeum resulted from the crusaders' licentiousness.²³ Their record at Antioch was no better: they rioted in unrestrained lust, knew not the meaning of temperance, were given over to fornication, adultery, and nameless debaucheries as soon as they arrived.²⁴ When the siege dragged on and supplies grew short, however, the crusaders mended their ways and were rewarded by the capture of the city. Immediately they relapsed, took up once more with their loose women; and the predictable result, as the chroniclers noted with grim satisfaction, was the arrival of Kerbogha's army to besiege the crusaders within Antioch. Once more they mended their ways and, when they had done this, God granted them victory over Kerbogha.²⁵ The pattern persisted even after the First Crusade ended; the sexual profligacy and debauchery of the Latin settlers continued to be invoked in order to account for the military reverses that they encountered.²⁶ The lesson was plain: the crusaders were assured of victory in this life and salvation in the next, but only so long as they avoided carnal sins.²⁷

If the Crusade's leaders believed that sexual licentiousness caused military disaster, as the

chroniclers confidently claimed, then the obvious tactic to avert defeat was to purify the army by expelling the prostitutes and perhaps even the married women from the camp prior to major engagements; this the leaders in fact did.²⁸ In an effort to restrain sexual offences by their soldiers and hence to assure victory, the leaders turned prostitutes and unattached women out of the camps during periods of peril.²⁹ Although Raymond d'Aguilers considered that God's wrath was not provoked when married men had sexual relations with their wives,³⁰ others feared that any sexual activity at all might enrage Him. Hence at Antioch the leaders required that married women, too, must leave the camp so that their husbands might not yield to sexual desire on the eve of battle.³¹ The women who were exiled, several thousand of them according to Albert of Aachen, found refuge in a nearby fortified settlement and remained there until Antioch surrendered.³²

In addition to removing temptation by exiling the army's women, at least temporarily, the Crusade's leaders were also anxious to allay God's wrath by acts of penance and spiritual purification before important battles. Literary sources, such as *chansons de geste*, commonly describe warriors as doing collective penance before battle, and the army of the First Crusade, by all accounts, practiced this spiritual strategy quite regularly.³³ Thus, before attacking Kerbogha's forces at Antioch, the soldiers fasted for three days, confessed their sins, received communion, and distributed alms.³⁴ Just prior to the final assault on Jerusalem in July 1099, the crusaders undertook an even more elaborate course of penitential observances. In addition to fasting, almsgiving, confession, and communion, they listened to a sermon and marched barefoot in a penitential procession around the city.³⁵ Practices of this sort persisted in later crusades as well and became standard crusading procedure.³⁶

These penitential exercises not only demonstrated to God that the crusaders repented their sexual lapses and other moral shortcomings, but they also taught the rank-and-file crusaders that the expedition's leaders wanted to uphold an austere standard of sexual conduct. To reinforce this, the leaders adopted stern sanctions to punish members of their armies who transgressed the rules concerning sexual conduct. It is not unexpected to find that the burden of punishment often fell more heavily on the women involved than on the men – this was, after all, a common pattern of law enforcement in Europe as well.³⁷ According to Guibert of Nogent, unmarried women who became pregnant in the army at Antioch were subject to savage tortures (*atrocibus supliciis*) and, he added, apparently as an afterthought, so were their pimps.³⁸ Guibert's account may be exaggerated, for we know that Guibert suffered from a deep-seated horror of sex in all its forms.³⁹ A more explicit, but more temperate, account of the punishment visited upon sexual offenders comes from Albert of Aachen:

A man and woman taken in adultery were stripped naked before the whole army. After their hands had been tied behind their backs, they were forced to walk around the whole army, while being roughly beaten with sticks by the executioners, so that when others saw the barbarous blows that they suffered, they might be frightened away from such nasty wickedness.⁴⁰

This account may refer to the case of a monk and his mistress who were convicted of adultery by the ordeal of the glowing iron and whipped naked through the crusaders' camp, as another witness reports.⁴¹ In any event, just such punishments as these were often imposed on sex offenders in the West.⁴² Crusading chroniclers also warned their audiences that crusaders who indulged in irregular sexual exploits might meet a sudden and particularly unpleasant death, as happened, for example, to an erring archdeacon and his lady, who were dispatched in spectacularly gruesome ways by a Turkish patrol that surprised the guilty pair while they were playing dice in an orchard.⁴³

Writers who described the First Crusade probably reflected the fear of the participants

when they described the sexual licentiousness of their foes. They depicted the Muslims as addicted to lurid forms of sexual debauchery and described the Saracens as having a special lust for the charms of virtuous Christian women.⁴⁴ Albert of Aachen was particularly fond of such stories, as witness his tale of a Turk's seduction of a beautiful nun from Trier⁴⁵ and his account of the marriage of a crusader's widow to a Turkish potentate.⁴⁶ Guibert of Nogent was especially horrified by the lechery of the Byzantines. So addicted were the Greeks to sexual excess, according to Guibert, that the imperial government created a system of compulsory prostitution and required every family to contribute a quota of daughters to the public stews.⁴⁷

Cross-cultural sexual adventures were by no means limited to lustful Turks who worked their wicked ways with virtuous Christian ladies. Early in the Crusade, according to Guibert, the crusaders fell prey to the lures of Greek women. Some Franks, indeed, soon came to prefer the charms of Byzantine women to those of their own ladies, a development that Guibert described with fascinated disgust. Even worse, he added, some of them acquired a taste for Greek boys, whom they also found available in the state-run brothels.⁴⁸ Other crusading chroniclers were struck by the fatal fascination that Levantine women held for western soldiers. Liaisons between crusaders and native women, according to the vision of a priest named Stephen during Kerbogha's siege of Antioch, caused an enormous stench to rise to heaven.⁴⁹ Only when the crusaders abandoned their local lovers could they hope to enjoy God's favour.⁵⁰ And so they did; but only temporarily. The crusaders certainly found sexual access to Muslim women fairly easy; in addition to professional prostitutes, they expected and doubtless received sexual as well as domestic service from the Muslim women whom they captured and whom they bartered back and forth among themselves.⁵¹

But not all of the crusaders' sexual contacts with Levantine women were extramarital. As early as 1098, at the siege of Antioch, Tudebode reported that Kerbogha held out intermarriage with Muslim women as a lure to attract deserters from the crusading army.⁵² Once Latin men began to settle permanently in the East, they also began to marry women from the region. In a well-known passage of his *History* dealing with Latin settlements following the First Crusade, Fulcher of Chartres reported the custom of intermarriage between Latins and native women:

While one settler might have his own home and household, as it were by paternal and hereditary right, another might marry a wife not from his own stock, but a Syrian or an Armenian or even a Saracen woman who had obtained the grace of baptism.⁵³

The offspring of these cross-cultural unions became a special social class, the Turcoples, within the Latin states.⁵⁴

There was obviously some ambivalence among the Latin settlers concerning sexual relations between their own people and the Muslim population. The Council of Nablus in 1120, which was, as Prawer points out, really a *parlement* rather than an ecclesiastical council in the ordinary sense,⁵⁵ enacted severe penalties against Latin men who had extramarital sexual relations with Muslim women:

If anyone shall be proved to have slept with a Muslim woman with her consent, let him be castrated and let her nose be cut off.⁵⁶

The Nablus assembly also penalised Latin women who formed sexual attachments with Muslim men:

If a Christian woman shall freely have intercourse with a Saracen man, let both of them be condemned to the penalty for adulterers. If, however, he took her by force, she shall not be held guilty; but the Saracen shall be made a eunuch.⁵⁷

Lest persons accused of these offences plead that they had acted in ignorance of their partner's status, the Nablus assembly further decreed that Saracens of either sex who dressed like Franks should be enslaved.⁵⁸ The Nablus enactments specifically sought to discourage sexual encounters between Latin Christians and those local peoples who remained loyal to Islam. The prohibitions were aimed at sexual liaisons across religious lines, rather than at interracial sexual relations. Latins, especially Latin men, were free to marry Syrian and Armenian Christians and even to marry Christian converts from Islam; but marriage to a practicing Muslim was subject to severe penalties. Religion, not race or ethnic heritage, was the issue that the Nablus decrees addressed.

Finally there is the theme of sexual violence in the crusade. One stock accusation that western Christians made against the Muslims involved the charge that Saracens routinely raped Christian women in the territories that they conquered. Robert the Monk's account of Pope Urban II's speech at Clermont represented the pope as charging the Turks with violating the women of Anatolia.⁵⁹ Other chroniclers described their enemies as ravishing nuns and other women during the popular Crusade,⁶⁰ violating Armenian girls and woman at 'Arqa,⁶¹ putting captured boys and women into brothels,⁶² and holding out the incentive of liberal opportunities for rape in order to spur on their troops.⁶³

But the crusaders themselves were not immune to similar charges and western chroniclers occasionally hint at the rape and other mistreatment of women by crusading armies.⁶⁴ Crusaders occasionally committed acts of sexual violence other than rape. One example is the incident during the crusade of 1101 when Latin troops hacked off the breasts of a Christian woman who was defending her home from their attack.⁶⁵ Perhaps unconsciously revealing of the attitude of crusading soldiers toward the women of their defeated foes is the half-boast of Fulcher that, after defeating Kerbogha at Antioch,

The Franks did no other harm to the women whom they found in (the enemy's) tents – save that they ran their lances through their bellies.⁶⁶

Latin settlers in the Holy Land, however, were not prepared to tolerate sexual violence against the Muslims who had now become their subjects. Hence we find the *parlement* of Nablus enacting stern measures against Latins and others who committed sexual assaults on Muslim women:

If anyone commits forcible rape against a Saracen woman of his household, let her be enslaved and let him be castrated. If anyone commits forcible rape against a Saracen woman who belongs to another, let him suffer a similar penalty.⁶⁷

The history of the First Crusade thus appears, in the light of the evidence that we have examined, to have been marked by a fundamental ambivalence concerning sexual conduct. While the clergy and a few of the secular leaders attempted to restrict the sexual activities of the crusading forces, the great mass of the rank and file seems not to have implemented this policy with any great consistency. Women of various kinds accompanied the crusaders throughout their journey and sexual contacts between them and the troops occurred with considerable regularity. Only at certain critical periods in the course of the expedition were the leaders, clerical and lay, able to impose temporary restraints upon the sexual activities of their followers. These critical episodes always centered on preparations for a major confrontation with the enemy. These episodes also corresponded, nearly always, with periods of feverish penitential activity: prayer, fasting, almsgiving, and the like usually accompanied the periods of enforced sexual continence. This association of penance, sexual abstinence, and crisis during the Crusade strikingly parallels the insistence of western moralists that Christians must

abstain from sexual activity, even in marriage, during the penitential seasons of the ecclesiastical year.

Also striking is the gradual development of a system of penal law to punish disapproved sexual conduct within the crusaders' ranks. There is no evidence that any such penal regulations existed at the start of the expedition. By the time that the army had settled down to besiege Antioch, however, some sort of penal system seems to have been in place. The evidence suggests that the regulation of sexual conduct that developed during the course of the Crusade may have continued in force, perhaps with some further elaboration, after the capture of Jerusalem in 1099, and that the experience of the crusading army in dealing with the sexual activities of its members underlies the Latin Kingdom's law on these matters, as that law is known to us from the decrees of the *parlement* of Nablus in 1120.

Finally, the evidence surveyed here suggests that the regulation of sexual conduct during the First Crusade and its aftermath represents yet one more example of the exportation of western European folkways to the crusading outposts of the Latin East.

NOTES

- ¹ J.A. Brundage, *Medieval Canon Law and the Crusader* (Madison, 1969), 10-18; P. Rousset, *Les origines et les caractères de la première croisade* (Neuchâtel, 1945), 134-7.
- ² P.J. Payer, 'Early medieval regulations concerning marital sexual relations', *Journal of Medieval History*, vi (1980), 370-1; J.-L. Flandrin, 'La vie sexuelle des gens mariés dans l'ancienne sociétés: de la doctrine de l'église à la réalité des comportements' in *Sexualités occidentales* (Paris, 1982; École des hautes études en sciences sociales, Centre d'études transdisciplinaires, Communications, No. 35), 102-5; M. Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (New York, 1966), 3, 130, 132.
- ³ Ivo of Chartres, 'Decretum' 8: 133-4, in *PL*, clxi, 613, incorporated in Gratian, *Decretum* C. 33 q. 4 c. 12 and C. 33 q. 5 c. 6. References to Gratian and the rest of the *Corpus iuris canonici* are to the standard edition by E. Friedberg (Leipzig, 1879). Both of the canons cited here are by St Augustine. On the canonistic marital debt doctrine, see E.M. Makowski, *Journal of Medieval History*, iii (1977), 99-114.
- ⁴ R. Kottje, 'Ehe und Eheverständnis in den vorgratianischen Bussbüchern', in *Love and Marriage in the Twelfth Century*, ed. W. Van Hoecke and A. Welkenhuysen (Leuven, 1981; Mediaevalia Lovaniensia, ser. 1, no. 8), 339; Payer, 'Early medieval regulations', pp. 365-7; D. Lindner, *Der Usus Matrimonii: eine Untersuchung über seine sittliche Bewertung in der katholischen Moraltheologie alter und neuer Zeit* (München, 1929), 86-7.
- ⁵ Payer, 'Early medieval regulations', pp. 369-70.
- ⁶ J. Leclercq, *Monks on Marriage, a Twelfth-Century View* (New York, 1982), 69.
- ⁷ Burchard, 'Decretum' 19:5 (*PL*, cxl, 960); Ivo, 'Decretum' 2:32 (col. 168 = Gratian, D. 2 de cons. c. 21); 2:24 (col. 166); 4:47 (col. 274); 8:83 (col. 601); 8:84 (col. 601) = 'Panormia' 6.21 (cols. 1217-18) = Gratian C. 33 q. 4 c. 4.
- ⁸ P. Fournier and G. Le Bras, *Histoire des collections canoniques en occident depuis les fausses décrétales jusqu'au Décret de Gratien* (Paris, 1931-2) ii, 55-7, 105-6.
- ⁹ St Anselm, 'De nuptiis consanguineorum' (*PL*, clviii, 559) and 'Oratio IV' (*PL*, clix, 870); Guibert of Nogent, *Self and Society in Medieval France*, ed. and trans. J.F. Benton (New York, 1970), 66; as for the views of Anselm and Ivo on the crusade, see J.A. Brundage, 'St Anselm, Ivo of Chartres, and the ideology of the first crusade', *Actes du colloque international anselmien* (Paris, forthcoming).
- ¹⁰ Robertus monachus, 'Historia Iherosolimitana', *RHC Oc.*, iii, 729-30. For Urban's own views see his letter of 19 September 1096 to the people of Bologna, in *Epistulae et chartae ad historiam primi belli sacri spectantes*, ed. H. Hagenmeyer (Innsbruck, 1901; hereafter *HEp*), 137-8. See also D.C. Munro, *American Historical Review*, xi (1906), 237.
- ¹¹ Fulcher of Chartres, *Historia Hierosolymitana (1095-1127)*, ed. H. Hagenmeyer (Heidelberg, 1913), pp. 162-3; Urban II, letter to the Bolognese, *HEp*, p. 138, as well as the letter of the Patriarch of Jerusalem (January 1098) in *HEp*, p. 148; Ivo of Chartres, 'Epistolae', 125, 245 (*PL*, clxii, 136-8, 251-3). On the problem of marital separation as a consequence of enlistment in the crusade see J.A. Brundage, 'The crusader's wife: a canonistic quandary', *Studia Gratiana*, xii (1967), 425-42. The separation of the crusader from his beloved quickly became a literary theme – see, for example, Conon de Béthune, 'Ahi! Amours con dure departie', or the Châtelain de Couci, 'A vous, amant, plus qu'a nule autre gent', as well as Hugues de Berze, 'S'onques nus hom por dure departie', and the anonymous 'Douce dame, cui j'aim en bone foi', all in *Les chansons de croisade*, ed. J. Bédier and P. Aubry (Paris, 1909), 32-5, 101-4, 126-9, 290.
- ¹² Albert of Aachen, 'Historia Hierosolymitana', *RHC Oc.*, iv, 281, 288, 317; Fulcher, pp. 183, 199; Baldric of Dol, 'Historia Jerosolimitana', *RHC Oc.*, iv, 17. Guibert of Nogent ('Gesta Dei per Francos', *RHC Oc.*, iv, 251) relates a folksy tale about a woman who led a goose on crusade. See also Orderic Vitalis, *Historia ecclesiastica*, ed. and trans. M. Chibnall (Oxford, 1969-80), v, 16.
- ¹³ Guibert of Nogent, 'Gesta Dei', p. 142; Ekkhard of Aura, 'Hierosolymita', *RHC Oc.*, v, 19; Albert of Aachen, pp. 272, 291; Orderic Vitalis, v, 16.
- ¹⁴ Baldric of Dol, p. 28; his account is closely followed by Orderic Vitalis, v, 54.
- ¹⁵ Baldric of Dol, p. 66; 'Gesta Francorum Iherusalem expugnantium', *RHC Oc.*, iii, 498-9.
- ¹⁶ During the Third Crusade, Richard of Devizes reported that business was so brisk that a campfollower in King Richard's army lived better than Philip Augustus's butler; Richard of Devizes, *Chronicle*, ed. J.T. Appleby (Edinburgh, 1963), 47-8. During the Fifth Crusade, James of Vitry applauded the efforts of Cardinal Henry of Albano to break up the brothels in the crusaders' camp near Damietta; James of Vitry, *Lettres*, ed. R.B.C. Huygens (Leiden, 1960), 117-18. A generation later, Joinville recorded St Louis's distress at finding brothels operating less than a stone's throw from his tent; *Life of St. Louis*, trans. R. Hague (New York, 1955), 66. A. Lecoy de la March, *La chaire française au moyen âge, spécialement au XIIIe siècle*, (2nd ed., Paris, 1886), 415, reports a sermon that provides a vivid description of harlots in the Holy Land soliciting pilgrims, crusaders, and sailors, slipping quietly from tent to tent in quest of business. He adds that they felt aggrieved if a client got away with the shirt on his back.

- ¹⁷ G. Schönfeldt, *Beiträge zur Geschichte des Pauperismus und der Prostitution in Hamburg* (Weimar, 1897; Socialgeschichtliche Forschungen, vol. 2), 81-2; R. Lewinsohn, *A History of Sexual Customs*, trans. A. Mayce (New York, 1958), 145. But cf. J.A. Brundage, 'Prostitution in medieval canon law', *Signs*, i (1976), 825-45 and the literature cited therein, especially I. Bloch, *Die Prostitution* (Berlin, 1912-25; Handbuch der gesamten Sexualwissenschaft).
- ¹⁸ Baldric of Dol, p. 34; *Gesta Francorum et aliorum Hierosolimitanorum*, ed. and trans. R. Hill (Edinburgh, 1962; hereafter *GF*), 19; Pierre Tudebode, *Historia de Hierosolymitano itinere*, ed. J.H. Hill and L.L. Hill (Paris, 1977), 52; Orderic Vitalis, v, 60.
- ¹⁹ Baldric of Dol, p. 107.
- ²⁰ Tudebode, p. 65; Albert of Aachen, p. 288; Fulcher, pp. 431-2.
- ²¹ Rousset, *Les origines*, p. 86; R. Hill, 'Crusading Warfare: A Campfollower's View' in *Proceedings of the Battle Conference on Anglo-Norman Studies*, i (1979), 79.
- ²² Albert of Aachen, p. 295.
- ²³ Fulcher, p. 196; Hill, 'Crusading Warfare', p. 79.
- ²⁴ 'Historia et gesta ducis Gotfridi', *RHC Oc.*, v, 466.
- ²⁵ *GF*, p. 58; Fulcher, p. 243; Robertus monachus, p. 821; 'Historia et gesta ducis Gotfridi' p. 478; 'Gesta Francorum Iherusalem expugnantium', pp. 499-501; Orderic Vitalis, v, 98.
- ²⁶ Water the Chancellor, *Bella Antiochena*, ed. H. Hagenmeyer (Innsbruck, 1896) 62; Fulcher, pp. 622-4; Hill, 'Crusading Warfare', p. 80.
- ²⁷ Albert of Aachen, p. 416.
- ²⁸ Fulcher, pp. 222-3; Rousset, *Les origines*, pp. 146-7; Hill, 'Crusading Warfare', p. 76.
- ²⁹ Baldric of Dol, p. 66; Albert of Aachen, pp. 378-9; 'Historia et gesta ducis Gotfridi', pp. 467, 478, 488.
- ³⁰ Raymond d'Aguilers, *Le 'Liber' de Raymond d'Aguilers*, ed. J.H. Hill and L.L. Hill (Paris, 1969), 97.
- ³¹ Fulcher, p. 223.
- ³² Albert of Aachen, p. 365.
- ³³ Rousset, *Les origines*, p. 124.
- ³⁴ *GF*, pp. 67-8; Guibert of Nogent, 'Gesta Dei', p. 205; Robertus monachus, p. 827; *La chanson d'Antioche*, 7.33, ll. 959-64, ed. P. Paris, (Paris, 1848) ii, 192; Orderic Vitalis, v, 100; letter of the clergy and people of Lucca (October 1098) in *HEp*, p. 164; Rousset, *Les origines*, p. 87.
- ³⁵ *GF*, p. 90; Raymond d'Aguilers, p. 144; Albert of Aachen, pp. 470-1; Gilo, 'Historia gestorum viae nostri temporis Hierosolymitanae', *RHC Oc.*, v, 797; Anonymous of Florence, 'Brevis narratio belli sacri', *RHC Oc.*, v, 372; Orderic Vitalis, v, 164-8; letter of Archbishop Daimbert to the pope (September 1099) in *HEp*, p. 171.
- ³⁶ Fulcher, pp. 493-4; Orderic Vitalis, v, 178; James of Vitry, *Lettres*, pp. 117-18.
- ³⁷ Twelfth-century writers sometimes justified this disparity of treatment on the grounds that the male sex had greater dignity than the female; thue Huggucio, *Summa* to D. 26 c. 2, in Cambridge, Pembroke College, MS 72, fol. 137ra: 'Alii dicunt quod hac diuersitas contingat propter dignitatem sexus uirilis et propter indignitatem sexus mulieris'. Certainly the law demanded greater chastity from a woman than from a man, as Cardinal Hostiensis observed: *Summa aurea*, lib. 1, tit. De bigamis (Lyon, 1537) fol. 40vb.; also Eleanora of Arborea, *Commentaria et glossa in Cartam de logu*, c. 22 (Calari, 1708), 58. In most cases, the legal position of a woman was inferior to that of a man, according to Hostiensis, who provided a catalogue of situations in which this was true; *In quinque Decretalium libris commentaria*, 5 vols, in 2 (Venezia, 1581), vol. i, fol. 204va-vb, commenting on X 1.43.4(5). For additional examples see Rufinus, *Summa decretorum* to C. 32 q. 1 c. 4 v. *non ad imparia*, ed. H. Singer (Paderborn, 1902), 477; *Summa 'Elegantius in iure diuino' seu Coloniensis* 4.7, ed. G. Fransen and S. Kuttner (Città del Vaticano, 1969—in progress, 2 vols. to date; Monumenta iuris canonici, A/1) ii, 4. Some authorities held, however, that all women were at least equal to one another, despite social distinctions; *Summa Parisiensis on the Decretum Gratiani* to C. 32 q. 1 c. 11 v. *non in sola*, ed. T.P. McLaughlin (Toronto, 1952), 240-1.
- ³⁸ Guibert of Nogent, 'Gesta Dei', p. 182.
- ³⁹ Guibert of Nogent, *Self and Society*, pp. 14, 18, 26, 30.
- ⁴⁰ Albert of Aachen, p. 379.
- ⁴¹ Guibert of Nogent, 'Gesta Dei', p. 182.
- ⁴² Eleanora of Arborea, *Commentaria*, 22 (1708 ed., p. 57); Perugia, *Statuta* 3.83, 88 (Perugia, 1523-8), fol. 33va, 34vb; Piacenza, *Statuta et Decreta* 5.41 (Brescia? c. 1495), unpaginated.
- ⁴³ Albert of Aachen, pp. 370-1.
- ⁴⁴ Tudebode, p. 92.
- ⁴⁵ Albert of Aachen, pp. 327-8.
- ⁴⁶ Albert of Aachen, p. 436.
- ⁴⁷ Guibert of Nogent, 'Gesta Dei', p. 127.
- ⁴⁸ Guibert of Nogent, 'Gesta Dei' p. 133.
- ⁴⁹ Tudebode, p. 99.

- ⁵⁰ Fulcher, p. 243.
- ⁵¹ Fulcher, p. 403. Guibert ('Gesta Dei', p. 127) declared that slavery was a custom unknown to the Latins, a statement that is patently untrue. In any event, the Latins quickly adapted themselves to the slave-trading customs of the Near East.
- ⁵² Tudebode, p. 109.
- ⁵³ Fulcher, p. 748.
- ⁵⁴ Raymond d'Aguilers, p. 55; Albert of Aachen, p. 434; J. Prawer, *The Latin Kingdom of Jerusalem. European Colonialism in the Middle Ages* (London 1972), 340-1; R.C. Smail, *The Crusaders in Syria and the Holy Land* (London, 1973), 182-3.
- ⁵⁵ J. Prawer, *Crusader Institutions* (Oxford, 1980), 15-16; H.E. Mayer, 'The Concordat of Nablus', *Journal of Ecclesiastical History*, xxxiii (1982), 531-43.
- ⁵⁶ Council of Nablus, c. 12, in J.C. Mansi, ed., *Sacrorum conciliorum nova et amplissima collectio* (Paris, 1901-27; hereafter Mansi) xxi, 264.
- ⁵⁷ Council of Nablus, c. 15, Mansi xxi, 264.
- ⁵⁸ Council of Nablus, c. 17, Mansi xxi, 264: 'Si Saracenus aut Saracena Francigeno more se induant, infiscentur'. Although the verb *infiscare* sometimes means 'to confiscate', both the grammatical structure and the context here seem to demand the meaning 'to enslave'.
- ⁵⁹ Robertus monachus, p. 728.
- ⁶⁰ Albert of Aachen, p. 288.
- ⁶¹ Albert of Aachen, p. 358.
- ⁶² Raymond d'Aguilers, p. 130.
- ⁶³ Raymond d'Aguilers, p. 155.
- ⁶⁴ Guibert of Nogent, 'Gesta Dei', p. 143.
- ⁶⁵ Albert of Aachen, p. 560.
- ⁶⁶ Fulcher, p. 257.
- ⁶⁷ Council of Nablus, c. 13-14, Mansi xxi, 264.

SECOND THOUGHTS

In a group of articles written over a period of more than thirty years there are, naturally enough, a number of things that I would put differently now than I did when they originally appeared. But as a far more eminent author than I once said: "Quod scripsi scripsi" and I shall content myself here with a handful of corrections and second thoughts.

In the passage of III 447–448 where I mentioned the election of Nicholas de l'Aigle as bishop of Chichester, I should note the suggestion of the late Professor C. R. Cheney that Nicholas may well have been a royal nominee to Chichester; if so his failure to be consecrated was probably a consequence of the interdict of 1208–1213. See also H. G. Richardson and G. D. Sayles, *The Governance of Mediaeval England from the Conquest to Magna Carta* (Edinburgh, 1963), p. 355, where the intrusion of Nicholas into the See of Chichester is referred to, although Nicholas is there named incorrectly as "Gilbert de l'Aigle".

At IX 81 and again at X 110 and 123 I assumed, as was the common teaching at that time, that Master Rolandus the canonist was identical with Rolando Bandinelli, who later became Pope Alexander III. I am now persuaded that this assumption was wrong and that Rolandus the canonist and Alexander III were almost certainly two different people, both of whom happened to be named Rolandus. On this question see John T. Noonan, Jr., "Who Was Rolandus" in *Law, Church, and Society: Essays in Honor of Stephen Kuttner*, ed. Kenneth Pennington and Robert Somerville (Philadelphia, 1977), pp. 21–48, and Rudolf Weigand, "Magister Rolandus und Papst Alexander III.," *Archiv für katholisches Kirchenrecht* 149 (1980) 3–44.

And in XIII 58 I adopted another opinion that was then considered orthodox, but that I now consider highly questionable, namely that Innocent III was, like Alexander III, a lawyer trained at Bologna. That once confident belief has now been called seriously into question by one of my own students, Kenneth Pennington, in "The Legal Education of Pope Innocent III," *Bulletin of Medieval Canon Law* 4 (1974) 70–77.

Likewise at VI 79 and again at XIII 57 I took for granted some supposed details of Gratian's career that I have since learned were in fact based upon late and often undependable sources, thanks (once again) to John T. Noonan, Jr., "Gratian Slept Here: The Changing

Identity of the Father of the Systematic Study of Canon Law," *Traditio* 35 (1979) 145-172.

Finally, this reprint of my 1963 article on the treatment of the Crusade of Richard I in the *Quaestiones Londinenses* has given me the opportunity to correct and amend several passages in that text at III 448-52, thanks to kind suggestions that I have received from Stephan Kuttner.

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